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ALASKA BOUNDARY.

BRITISH CASE.

JOHN W. FOSTER

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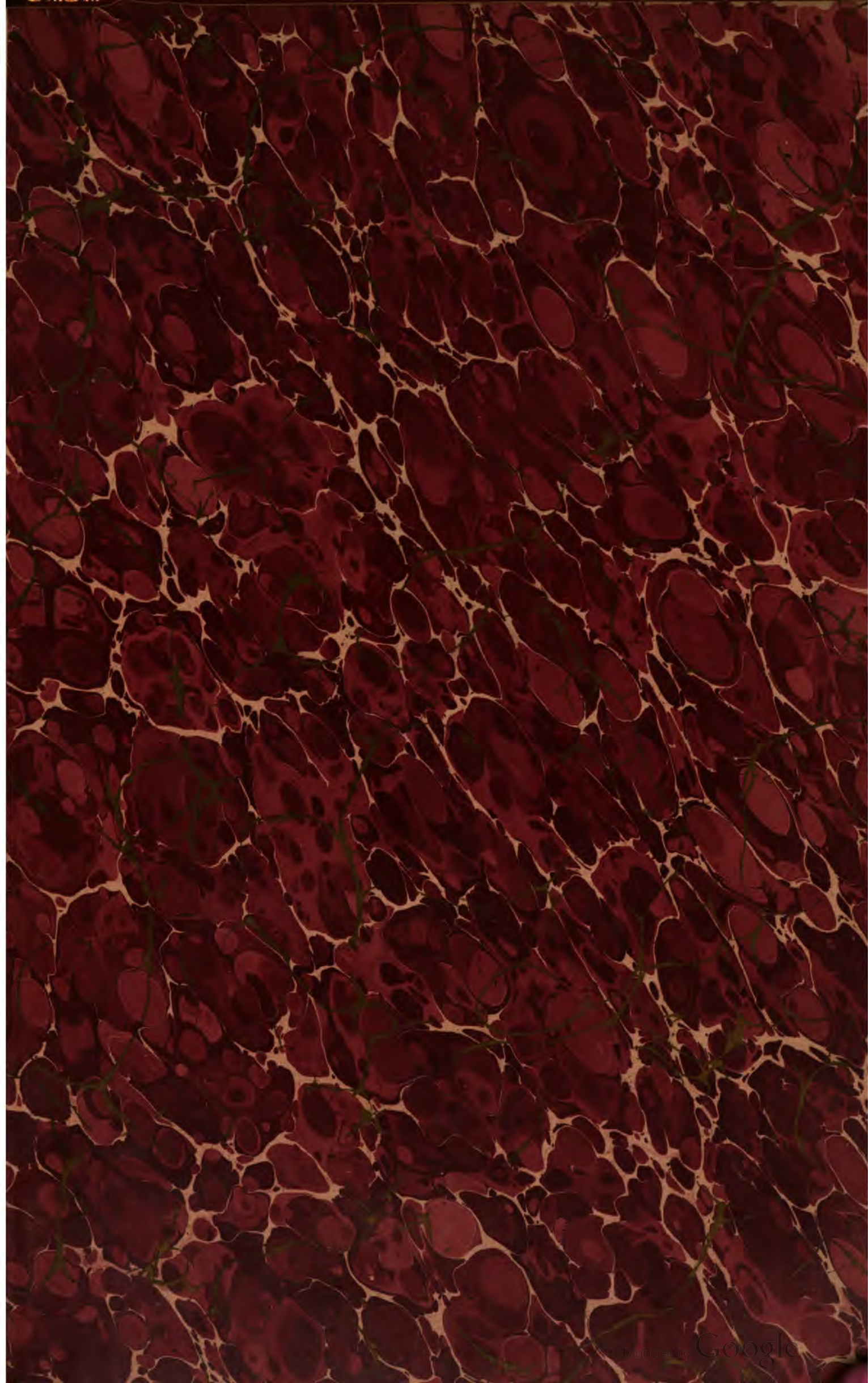
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BOUNDARY BETWEEN THE DOMINION OF CANADA
AND THE TERRITORY OF ALASKA.

3

C A S E

PRESENTED ON THE PART OF THE

GOVERNMENT OF HIS BRITANNIC MAJESTY

TO THE

TRIBUNAL CONSTITUTED UNDER ARTICLE I OF THE
CONVENTION

SIGNED AT WASHINGTON, JANUARY 24, 1903,

BETWEEN

HIS BRITANNIC MAJESTY AND THE UNITED
STATES OF AMERICA.

0

LONDON:

PRINTED AT THE FOREIGN OFFICE,
BY HARRISON AND SONS, PRINTERS IN ORDINARY TO HIS MAJESTY.

1908.

CONTENTS.

Chapter.	Subject.	Page.
	Terms of Convention	1
	Introduction	5
I	The Negotiations on Boundary Question (1821-25), and the Treaty of 1825	14
II	Diplomatic Action since 1825	28
III	Character of Topography	43
IV	The Questions to be Answered	45
V	Acts subsequent to the Treaty	84
VI	Cartography	100

DEC 6 1922.

BOUNDARY BETWEEN THE DOMINION OF CANADA AND THE TERRITORY OF ALASKA.

CASE

PRESENTED ON THE PART OF THE GOVERNMENT OF HIS BRITANNIC MAJESTY TO THE TRIBUNAL CONSTITUTED UNDER ARTICLE I OF THE CONVENTION SIGNED AT WASHINGTON ON THE 24TH DAY OF JANUARY, 1903, BETWEEN HIS BRITANNIC MAJESTY AND THE UNITED STATES OF AMERICA.

Convention, 24th January, 1903.

ON the 24th day of January, 1903, a Convention was concluded between Great Britain and the United States of America in order to provide for a friendly and final adjustment of the differences which exist between them in respect to the true meaning and application of certain clauses of the Convention between Great Britain and Russia, signed under date of the 28th (16th) February, A.D. 1825, which clauses relate to the delimitation of the boundary-line between the territory of Alaska, now a possession of the United States, and the British possessions in North America.

Article I of the Convention provides that the Tribunal shall consist of six impartial jurists of repute, who shall consider judicially the questions submitted to them.

The other principal Articles of the Convention are the following :—

“Article III. It is agreed by the High Contracting Parties that the Tribunal shall consider, in the settlement of the questions submitted to its decision, the Treaties respectively concluded between His Britannic Majesty and the Emperor of All the Russias under date of the 28th (16th) February, A.D. 1825, and between the United States of America and the Emperor of All the Russias, concluded under date of the 18th (30th) March, A.D. 1867, and particularly the Articles

III, IV, and V of the first-mentioned Treaty, which in the original text are, word for word, as follows:—

“‘III. La ligne de démarcation entre les possessions des Hautes Parties Contractantes sur la côte du Continent et les Iles de l’Amérique Nord-ouest sera tracée ainsi qu’il suit:—

“‘A partir du point le plus méridional de l’île dite *Prince of Wales*, lequel point se trouve sous la parallèle du 54° 40’ de latitude nord, et entre le 131° et le 133° degré de longitude ouest (méridien de Greenwich), la dite ligne remontera au nord le long de la passe dite *Portland Channel*, jusqu’au point de la terre ferme où elle atteint le 56° degré latitude nord; de ce dernier point la ligne de démarcation suivra la crête des montagnes situées parallèlement à la côte, jusqu’au point d’intersection du 141° degré de longitude ouest (même méridien); et, finalement, du dit point d’intersection, la même ligne méridienne du 141° degré formera, dans son prolongement jusqu’à la Mer Glaciale, la limite entre les possessions Russes et Britanniques sur le Continent de l’Amérique Nord-ouest.

“‘IV. Il est entendu, par rapport à la ligne de démarcation déterminée dans l’Article précédent—

“‘1. Que l’île dite *Prince of Wales* appartiendra toute entière à la Russie;

“‘2. Que partout où la crête des montagnes qui s’étendent dans une direction parallèle à la côte depuis le 56° degré de latitude nord au point d’intersection du 141° degré de longitude ouest se trouverait à la distance de plus de 10 lieues marines de l’Océan, la limite entre les possessions Britanniques et la lisière de côte mentionnée ci-dessus comme devant appartenir à la Russie sera formée par une ligne parallèle aux sinuosités de la côte, et qui ne pourra jamais en être éloignée que de 10 lieues marines.

“‘V. Il est convenu, en outre, que nul établissement ne sera formé par l’une des deux Parties dans les limites que les deux Articles précédents assignent aux possessions de l’autre. En conséquence, les sujets Britanniques ne formeront aucun établissement soit sur la côte, soit sur la lisière de terre ferme comprise dans les limites des possessions Russes, telles qu’elles sont désignées dans les deux Articles précédents; et, de même, nul établissement ne sera formé par des sujets Russes au delà des dites limites.’

“The Tribunal shall also take into consideration any action of the several Governments or of their respective Representatives, preliminary or subsequent to the conclusion of said Treaties, so far as the same tends to show the original and effective understanding of the Parties in respect to the limits of their several territorial jurisdictions under and by virtue of the provisions of said Treaties.

Questions.

“Article IV. Referring to Articles III, IV, and V of the said Treaty of 1825, the said Tribunal shall answer and decide the following questions :—

“1. What is intended as the point of commencement of the line ?

“2. What channel is the Portland Channel ?

“3. What course should the line take from the point of commencement to the entrance to Portland Channel ?

“4. To what point on the 56th parallel is the line to be drawn from the head of the Portland Channel, and what course should it follow between these points ?

“5. In extending the line of demarcation northward from said point on the parallel of the 56th degree of north latitude, following the crest of the mountains situated parallel to the coast until its intersection with the 141st degree of longitude west of Greenwich, subject to the condition that if such line should anywhere exceed the distance of 10 marine leagues from the Ocean then the boundary between the British and the Russian territory should be formed by a line parallel to the sinuosities of the coast and distant therefrom not more than 10 marine leagues, was it the intention and meaning of said Convention of 1825 that there should remain in the exclusive possession of Russia a continuous fringe, or strip, of coast on the mainland, not exceeding 10 marine leagues in width, separating the British possessions from the bays, ports, inlets, havens, and waters of the Ocean, and extending from the said point on the 56th degree of latitude north to a point where such line of demarcation should intersect the 141st degree of longitude west of the meridian of Greenwich ?

“6. If the foregoing question should be answered in the negative, and in the event of the summit of such mountains proving to be in places more than 10 marine leagues from the coast, should the width of the *lisière*, which was to belong to Russia, be measured (1) from the mainland coast of the ocean, strictly so-called, along a line perpendicular thereto, or (2) was it the intention and meaning of the said Convention that where the mainland coast is indented by deep inlets forming part of the territorial waters of Russia, the width of the *lisière* was to be measured (a) from the line of the general

direction of the mainland coast, or (b) from the line separating the waters of the Ocean from the territorial waters of Russia, or (c) from the heads of the aforesaid inlets?

"7. What, if any exist, are the mountains referred to as situated parallel to the coast, which mountains, when within 10 marine leagues from the coast, are declared to form the eastern boundary?"

The Convention was ratified on the 3rd March, 1903.

The full text of the Convention is set out in App. I, p. 1. the Appendix to this Case.

The accompanying Case, together with the documents, official correspondence, maps, and other evidence, on which the Government of Great Britain relies, contained in Appendices I, II, and III to the Case, is delivered pursuant to Article II of the Convention.

INTRODUCTION.

Treaty of 1825.

App. I, p. 37.

The Convention between Great Britain and Russia to be interpreted by the Tribunal was concluded on the 16th (28th) February, 1825.

Treaty of 1867.

Ib., p. 136.

By a Treaty between the United States and Russia concluded on the 18th (30th) March, 1867, Russia ceded to the United States all the territory and dominion then possessed by her on the Continent of America and in the adjacent islands within geographical limits therein described. In fixing the eastern limits the line of demarcation between the Russian and the British possessions in North America, as established by the Convention between Russia and Great Britain of the 16th (28th) February, 1825, and as described in Articles III and IV of that Convention, was adopted word for word. An interpretation of the Treaty which will fix the line of demarcation between the British and Russian possessions in North America, as it was laid down in the Treaty of 1825, will delimit the boundary-line between those territories adopted by the Treaty of 1867, and as it continues to be at the present time.

On the cession of the territory to the United States, the name "Alaska" was substituted for "Russian America."

Province of British Columbia.

Throughout almost its entire length, that is to say, up to latitude 60°, the disputed territory adjoins the Province of British Columbia on its westward side. The boundaries of this portion of the British possessions in America were fixed by an Imperial Act of 1863, which specifies the western boundary to be the Pacific Ocean and the frontier of the Russian territories in North America, the north to be the 60th parallel of latitude, the east the 120th meridian of west longitude and the summit of the Rocky Mountains.

Yukon Territory.

The remaining portion in dispute adjoins the Yukon territory, and includes the easterly boundary of the coast strip from the vicinity of Yakutat Bay to the 141st meridian.

British Columbia did not enter the Canadian Confederation until July 20th, 1871, when its territory became a part of the Dominion of Canada.

The Yukon territory was created by an Act of the Federal Parliament June 13th, 1898, out of territory added to Canada on June 23rd, 1870.

Only a portion of the international boundary is in dispute.

Portion of Line in Dispute.

With that part beginning at or near Demarcation Point on the Arctic Ocean at longitude 141° west, and following that meridian southwards a distance of about 450 marine miles until it strikes the summit of the mountains near Mount St. Elias—which is just within Canadian territory—the present enquiry has nothing to do. For that distance the boundary is a purely geodetic one, and a meridian of longitude can be ascertained with scientific precision.

The disputed part of the boundary-line is that which runs from the 141st meridian to the commencement of the line according to the Treaty, at the southernmost point of Prince of Wales Island. It may be said to be, roughly speaking, about 550 marine miles in length. Inasmuch as in the Treaty the line is described commencing from the south, that order will, as a matter of convenience, be observed in this Case.

The general geographical character of the territory in dispute will be appreciated by looking at the map No. 37 in the Atlas, which will also show the lines drawn in accordance with varying interpretations of the Treaty.

App. II, Atlas
Map No. 37.

HISTORICAL.

I.—MARITIME DISCOVERIES, 1741–1821.

The history of the various voyages of discovery in the Northern Pacific and Behring Sea forms a considerable literature by itself. During the negotiations resulting in the Treaty between Great Britain and Russia in 1825, and afterwards, in the course of the presentation of the Behring Sea Case under the Treaty of the 29th February, 1892, an exhaustive examination was made of all sources of information under this head, but for present purposes a short summary is deemed sufficient.

The part of the New World washed by the North Pacific Ocean was discovered much later

I. Maritime Discoveries, 1741–1821.

than any other part of the North American torrid and temperate zones. The evident reason for this is its greater remoteness from Europe and the fact that it could only be reached by doubling Cape Horn or the Cape of Good Hope.

Russian Discoveries.

Bancroft,
"History of
Alaska,"
Ed. 1886, p. 37.*

Russian dis-
coveries by Coxe,
passim.

Hudson's Bay
Company to Mr.
George Canning,
25th September,
1822, inclosure,
see No. 13 in
App. I, pp. 24-28.

Extract from a
letter from Mr.
Middleton to Mr.
Adams, 1st (13th)
December, 1823,
note (d) to in-
closed Confidential
Memorandum,
American State
Papers, Foreign
Relations, vol. v,
pp. 449-455.

Alaska, p. 141.

Ib., pp. 157, 158.

Ib., p. 174.

The Russians had crossed Siberia and reached Kamtschatka in 1697. In 1728-29 Behring practically proved the separation of the continent as high as 67° on the coast of Asia. In the following year, according to Coxe, he made another attempt to reach land to the east, but, after sailing 50 leagues from the Asiatic coast without seeing anything, returned to Okhotsk and afterwards to St. Petersburg. Nothing more was done until 1741. In June of that year two vessels set sail, the one commanded by Behring, the other by his lieutenant Tchirikoff. According to Müller, the historian of the expedition, Behring came in sight of land in 58° 28' north latitude, and Tchirikoff in latitude 56°. Behring did not reach the mainland, but sent a boat on shore for water on a large island. He named Cape St. Elias, at the southern end of Kayak Island, but did not land or take possession. It is not clear that Behring ever reached the mainland. Tchirikoff, according to Müller, reached the mainland in 56°, and sent ten men in a boat for water. As they never returned they were probably massacred. Six more sent after them never came back to the ship, and probably met the same fate. On the 27th July Tchirikoff returned to Kamtschatka. As Müller in his map shows no islands on the coast where Tchirikoff landed, it is believed that he landed on one of the large islands and mistook it for the mainland. A number of Russian voyages are outlined by the historian Coxe, extending from 1741 to 1748, to the Aleutian Islands, Fox Islands, Andreanorski Islands, and other territories comprehended in the Alaskan peninsula and islands to the north. In 1763, Glottof, on a trading voyage, reached Kadiak Island. In 1764 to 1768, Synd, a lieutenant of the Russian navy, made an expedition along the coast to Behring Strait. From this time to the visit of Captain Cook, according to Bancroft, single traders and small companies continued to traffic with the islands in much the same manner as before.

* Referred to hereafter as "Alaska."

Upon these discoveries Russia based in part her claims to maritime and territorial jurisdiction over the northern part of the Pacific Ocean and the north-west coast of America, which will be referred to hereafter. Her later discoveries were along the tracks of Cook and other modern navigators.

The Spanish Government sent three exploring expeditions along the west coast of North America between 1774 and 1779. These expeditions visited certain points on the west coast, up to the 60th degree of latitude.

In 1786, La Perouse, on his voyages round the world, under instructions from the French Government, first made the mainland of North America near Mount St. Elias. Thence he sailed eastward and southward, following the outer shores of the Alaskan and British Columbia Archipelagos to the coast of California.

United States' vessels first traded on the north-west coast in 1788.

No survey of the north-western coast was made until 1778, when Captain Cook, who had been sent out by the English Government, reached the American coast. Cook explored the north-west coast from about 44° north latitude as far as Prince William Sound and Cook's Inlet, and took possession of the coast territory. He was the first to lay down the main outlines of the north-western part of the continent. His surveys were until very recently considered in some parts the most reliable in existence. They did not, however, extend inside the islands.

Captain Cook's expedition was followed by those of Captain James Hanna in 1785, Captain Peters in the same year, Portlock and Dixon in 1786, Meares in 1787, 1788, and 1789, and Vancouver in 1792-94.

Post-Captain George Vancouver, R.N., had been instructed by the British Admiralty in 1791 to make an exploration of the north-west coast of America, between latitudes 30° and 60° north, to acquire accurate information as to whether there was any water communication from the north-west coast towards the eastern coast of North America; to ascertain the number, extent, and situation of European settlements on said north-west coast; and, further, to visit

Spanish Discoveries.

Alaska, pp. 194-197; 211-221.

1774-1779.

French Discoveries.

Ib., p. 255.

1786.

American Traders.

North-west coast, vol. i, p. 185.

1788.

British Explorations and Surveys.

Cook, voyage to the Pacific Ocean, 1776-1780, London, 1784.

1778

North-west coast, vol. i, pp. 173-174. Sauer's account of Billings's expedition, London, 1802, pp. 279-281. "A Voyage Around the World," &c., London, 1789.

1785.

1786-1789.
1792-1794.

Vancouver's Voyages.

Nootka (on the west coast of Vancouver Island) and receive from the Spanish Commandant there restitution of the lands and buildings the property of British subjects which had been seized by the Spaniards in 1789, but which Spain, by Convention of 28th October, 1790, had agreed to restore.

He set out from England in 1791, and, in accordance with his instructions, wintered at the Sandwich Islands in the winter of 1791-92.

In the spring of 1792 he crossed to the continental coast, and examined northward, that year, as far as Fitz Hugh Sound, returning to the Sandwich Islands again for the winter.

1793.

Early in 1793 he sailed again to the west coast of America, reaching it near Cape Mendocino. He then proceeded north to Nootka, and thence went to Fitz Hugh Sound, where he resumed his examination of the continental shore. His explorations thence forward for some time referred to the southern portion of the territory in dispute. They are of the utmost importance for the determination of the true construction of the Treaty, and a detailed examination of this survey will be found in a later portion of the Case.

The examination of the northern portion of the territory now in dispute was made on his return to the coast in July, 1794.

This completed Vancouver's survey of the north-west coast and adjacent archipelago. He then returned to Nootka, thence to the Sandwich Islands, and thence to England, viâ Cape of Good Hope, reaching home in September, 1795.

Captain Vancouver died in May, 1798, before his "Voyages" appeared. In the course of the same year, however, they were published in London by his brother, who explained in a note that Captain Vancouver himself had revised the whole up to p. 408 of the third volume. The portion thus revised covers the whole of his geographical discoveries on the coast of America. With this edition was published a volume of charts, three of which, relating to the portion of the coast now in question, are reproduced in the Atlas accompanying this Case.

App. II. Maps
Nos 1, 2, 3.

A French translation of Vancouver's "Voyages" was published in Paris in 1801, and in the same year a second English edition appeared in London.

No survey of that part of the continental coast material to the present question, except

Vancouver's, was made before 1825, nor, indeed, for a long time afterwards. After the publication of his "Voyages," with their accompanying volume of charts, several maps of this region were published, namely, a Russian map in 1802, Langdorff's (1803-1805), Arrowsmith's (1822), Arrowsmith's (1824), Faden's (1823). These are reproduced in the Atlas. All follow Vancouver's charting.

App. II, Atlas,
Maps 5, 7, 8, 9,
12, and 10.

It is practically certain that the negotiators of the Convention of 1825 had Vancouver's maps before them, because they not only adopt the latitudes and longitudes assigned by him to the various points referred to, but also his nomenclature. A reference to the names used in the diplomatic correspondence—Mount St. Elias, Cross Sound, Lynn Channel or Harbour, Chatham Strait, Norfolk Sound, Cook's Inlet, Admiralty Island, Novo - Archangelsk and Sitka, King George's Archipelago, King George's Island, Stephen's Passage, Duke of York's Island, Duke of Clarence's Strait or Sound, Prince of Wales's Island, Portland Channel or Canal, Observatory Inlet—will show that Vancouver's charts were used.

It is to be observed that Vancouver did not attempt any exploration or survey on land; nor had any one else attempted it before 1825. Vancouver's charts do not even show the existence of rivers; his surveys stopped at the beach.

Vancouver published in his atlas a chart of the southern part of the region now under consideration, and another of the northern part.

On the former is shown an interior continuous range of mountains, and smaller mountains closely following the shore lines. The intervening space is entirely covered by a conventional (and very regular) representation of mountains, less heavily shaded.

On the chart of the northern part the interior range is also shown boldly, but less elaborately, than on the other chart. The shore range is entirely absent, and in the intervening space the mountains are very lightly dotted in.

Differences in Mountains on Vancouver's Charts.

These differences between the charts are such that they at once strike the eye, and cannot escape notice.

A few miles of the mainland, with the interior range, is shown on both of the charts. This range on one of them is not more than 2 or 3

miles back from the head of Houghton Bay. On the other it is about 20 miles.

Vancouver has also a chart showing the whole coast on a smaller scale than the other two. This differs considerably from both the others. The shore range is considerably emphasized, so as to equal, or nearly so, the interior range.

The representation of mountains on Vancouver's charts was, therefore, purely conventional. They are differently depicted by him on his own several charts, and also by the map-makers who followed him. In no case could it have been supposed by any one in 1825 that these representations of mountains accorded with ascertained geographical features.

HISTORICAL.

II. Settlements on the islands and mainland previous to 1825.

RUSSIAN.

1778. Cook, Voyage to the Pacific Ocean, 1776-1780, London, ~~1874~~ 1784.

1783. Alaska, p. 186.

Ib., p. 191.

Ib., p. 224.

1786. A Voyage round the World, &c., London, 1789.

Meares' Voyages, 1790. See also "Annual Register," 1790, vol. xxxii, p. 287.

1788. Alaska, pp. 270-272.

1790. Ib., p. 285.

II. SETTLEMENTS ON THE ISLANDS AND MAINLAND TO 1825.

In 1778, at Cook's Inlet, Captain Cook found evidences of Russian trade, but no Russians. At Unalaska, one of the Aleutian Islands, he again heard of the Russians, and on a second visit met Russian traders.

In 1783 the first attempt was made, following Cook's discoveries, to establish a Russian trading post on the American mainland at Prince William Sound. It ended disastrously.

For some years after this, only one small vessel was dispatched from Siberia for trading purposes; but in 1784 Shelikof visited Unalaska, and reached Kadiak Island, intending to effect a permanent settlement there.

Portlock and Dixon, in 1786, visited Cook's Inlet and found a party of Russians encamped there, but no fixed establishment.

Meares in the same year met Russians and natives at Amlia Island, one of the Aleutian chain. He proceeded eastward along the Aleutians, and was piloted by a Russian into Unalaska. The only Russian establishments were underground huts of the native pattern.

In 1788 a Spanish expedition found a Russian colony at Three Saints, on Kadiak Island, but there were no Russians at Prince William Sound. Three Saints was the easternmost point which up to that time had a permanent Russian Settlement.

In 1790, Russia and Sweden being at war, a Swedish cruiser visited the Aleutian Islands, but

found no Government establishment, and no Russians except traders "in abject poverty."

In 1794 Vancouver ascertained the easternmost Russian Settlement at that time to be at Port Etches in Prince William Sound. He "clearly understood that the Russian Government had little to do with these Settlements; that they were solely under the direction of independent mercantile Companies."

Vancouver's
Voyages,
London, 1798,
vol. iii, p. 199.

1794.

In 1799 the "Caroline," Captain Cleveland, from Boston, arrived at Sitka shortly after a Russian post had been established there.

1799.

Of the enterprises of Baranoff, Governor of Sitka, Bancroft says :—

1798-1801.

"At every point eastward of Kadiak where he had endeavoured to open trade he had found himself forestalled by English and American ships, which had raised the prices of skins almost beyond his limited means."

Alaska, p. 384.

Even up to the 28th (16th) February, 1825, no Russian Settlement had been formed on the continent or in the vicinity of the strip in dispute. This was pointed out on the part of Great Britain at the beginning of the negotiations in 1823, and insisted on ever afterwards. At no time was this contention controverted by Russia, and towards the close of the negotiations its truth was frankly admitted.

Hudson's Bay
Company to Mr.
George Canning
25th September,
1822.
App. I, p. 24.

The Duke of
Wellington to
Mr. G. Canning,
28th November,
1822, inclosing
Memorandum
to Count
Nesselrode of
17th October,
1822.
Ib., p. 29.
Count Nesselrode
to Count Lieven,
17th April, 1824.
Ib., p. 75.

The relation of the British fur traders and the Hudson's Bay Company towards the disputed strip were, however, of a most intimate character, as shown by the various letters of J. H. Pelly, Deputy Governor of the Company, to Mr. Canning and others. The following extracts are made from a letter by Mr. Pelly to Mr. George Canning, the 25th September, 1822 :—

BRITISH

Settlement of the Hudson's Bay Company.

Hudson Bay
Company to Mr.
George Canning,
25th September,
1822.
App. I, p. 24

"In the year 1793, Sir Alexander McKenzie crossed the Rocky Mountains in 56° 30' north latitude, and penetrated to the Pacific Ocean in latitude 52° 20'. Immediately after his return the British fur traders sent expeditions and established trading posts in the country to the westward of the Rocky Mountains. New trading stations have been gradually formed as the country was more fully explored, and until 1821 the whole trade of an extensive district named New Caledonia, and extending from the mouth of Fraser's River, situated about 49° north latitude to about 60° north latitude, was carried on by the British North-west Company.

"The partnership of the British North-west Company being then about to expire, arrangements were made in 1821 by which the Hudson's Bay Company acquired possession of all the forts and trading stations of that

Association situated in New Caledonia, as well as in other parts of British North America.

"The principal forts, or permanent and central trading stations in New Caledonia, now occupied by the traders and servants of this Company, are situated at the Rocky Mountain Portage in 56° north latitude and 121° west longitude; on Stewart's Lake, in $54^{\circ} 30'$ north latitude and 125° west longitude; on McLeod's Lake, in 55° north latitude and 124° west longitude, and on Fraser's Lake, in 55° north latitude and about 127° west longitude; and there are several minor trading posts, the situations of which are occasionally changed according to local circumstances. By these means an extensive trade is carried on with all those Indian tribes which inhabit the country from about 60° north latitude as far south as the mouth of Fraser's River, which is in about 49° north latitude, and between the Rocky Mountains and the sea.

"The British fur traders have never met with the traders of any other nation in that country, and it does not appear that any part of it has ever been occupied by the subjects of Russia or of any other foreign Power. . . .

"This Company has trading establishments also in Mackenzie's River, which falls into the Frozen Ocean as far north as $66^{\circ} 30'$ north latitude, which carry on a trade with those Indians who inhabit the country to the west of that river and to the north of 60° of north latitude, and who, from the nature of the country, can communicate more easily with Mackenzie's River than with the trading posts in New Caledonia."

CHAPTER I.

THE NEGOTIATIONS ON BOUNDARY QUESTION (1821-25) AND THE TREATY OF 1825.

Ukase of 4th September, 1821.

On the 4th September, 1821, the Emperor of Russia published an Ukase, expressed to be for the protection of Russian trade with the Aleutian Islands and the part of the north-west coast of America subject to Russia. Certain rules were annexed to the Ukase, of which the first two were as follows :—

“1. The pursuits of commerce, whaling, and fishery, and of all other industry on all islands, posts, and gulfs, including the whole of the north-west coast of America beginning from Behring's Straits to the 51° of northern latitude, also from the Aleutian Islands to the eastern coast of Siberia, as well as along the Kurile Islands, from Behring's Straits to the south cape of the Island of Urup, viz., to the 45° 50' north latitude, is exclusively granted to Russian subjects.

“2. It is therefore prohibited to all foreign vessels, not only to land on the coasts and islands belonging to Russia, as stated above, but, also to approach them within less than 100 Italian miles. The transgressors' vessel is subject to confiscation along with the whole cargo.”

By a previous Ukase, published the 27th December, 1799, the Emperor Paul had created the Russian-American Company, and had granted to it extensive privileges in this region. It was this Company that would reap the benefit sought to be conferred on Russian subjects by the Ukase of 1821.

The Ukase of 27th December, 1799.

Ib., p. 5.

The Russian-American Company

The Ukase of 1821 was communicated by Baron Nicolay to the Marquess of Londonderry by a despatch of the 12th November, 1821, in answer to which Lord Londonderry, writing on the 18th January, 1822, stated that as to the exclusive sovereignty alleged to belong to Russia over the territories described in the Ukase, as also the exclusive right of navigating and trading within the maritime limits therein set forth, His Britannic Majesty must be understood as reserving all his rights. The United States also protested.

Ib., p. 14.

Ib., p. 20.

In the course of the discussions which arose out of the Russian pretensions, that Power

Behring Sea
Award, "United
States
No. 10 (1898)"
C. 7107.

App. I, p. 24.

The Main Points in Difference.

Atlas, App. II.
Map No. 87.

receded from the claim to exclusive dominion upon the seas in question. That part of the controversy is not now material. Suffice it to say that it was ultimately set at rest by the Award of the Arbitral Tribunal created by a Treaty between Great Britain and the United States, signed at Washington on the 29th February, 1892, to settle the differences which had arisen between these two Powers respecting the seal fishery in Behring Sea.

As regards the territorial boundary on land, the negotiations for a settlement originated in a suggestion made by Count Lieven to the Duke of Wellington in September, 1822, and recorded by the Duke in a Memorandum of the 16th of that month. On this occasion Count Lieven suggested that if Great Britain had any claim to territory on the north-west coast of America, such claim should now be brought forward. These negotiations, which will be summarized below, resulted in the Treaty of 1825, the construction of which is now in question.

It will be convenient, before going into detail, to indicate broadly the points now in difference between the parties before this Tribunal.

In the accompanying Atlas will be found a map showing the different lines which have been suggested as giving effect to the Treaty applied to the topography as now understood. From this it will be observed that at the southern end of the line there is a dispute as to the channel along which the boundary ought to be drawn, in obedience to the provision which requires that it should follow "la passe dite Portland Channel."

On the side of Great Britain it is contended that Portland Channel means the channel which Vancouver can be shown to have so named, that is to say, the narrow channel north of Wales Island and Pearse Island, and extending into the interior for 82 miles.

The United States, on the other hand, maintain that the wider channel to the south of these islands must be taken to be denoted as the commencement of the channel referred to by the expression "la passe dite Portland Channel," the identity of which, so far as its upper part is concerned, is not in dispute.

Great Britain, however, further contends that if there is to be any departure from the clear nomenclature of Vancouver, there are, as will be hereafter explained, other channels up which the

line should be drawn in preference to that suggested by the United States.

With regard to the rest of the line, the dispute is of a somewhat different character. According App. I, p. 37. to Article III of the Treaty, the line is to follow the crest of the mountains situated "parallèlement à la côte" to the point of its intersection with the 141st degree of west longitude. By Article IV it is provided that wherever the crest of these mountains is at a distance of more than 10 marine leagues from the ocean, the limit between British possessions and the *lisière* of coast which is to belong to Russia shall be formed by a line parallel to the coast, and which shall never be more distant therefrom than 10 marine leagues.

It is to be observed that the provision in Article IV, just mentioned, operates only in a given event, and then only as a corrective of the line primarily laid down, namely, that of the mountains. The event in which it is to operate is if the crest of the mountains, which extend in a direction parallel to the coast, is at a distance of more than 10 leagues from the ocean. It will be seen from the map already referred to, and more in detail from the large maps inclosed in the portfolio which accompanies this Case, that, in point of fact, the whole coast region is extremely mountainous, and that the mountains supply, speaking generally, the boundary stipulated for by the Treaty.

App. III.
Portfolio, British
Commission Map.

It is contended on behalf of Great Britain that the coast ("côte") with regard to which the mountains are contemplated as running in a parallel direction is the general line of coast of the Ocean (referred to in Article IV), and not the shore line of narrow inlets breaking that line; and, further, that the expression "montagnes situées parallèlement à la côte" and "montagnes qui s'étendent dans une direction parallèle à la côte" do not necessarily denote mountain chains, but include the case of separate mountains in the vicinity of the coast, a line drawn through the summits of which would, roughly speaking, be parallel to the general line of the coast.

The contention of the United States, on the other hand, is that there is no defined range of mountains running parallel to the coast in this region, but that the whole region is a "sea of mountains," and that, therefore, the provisions of Article IV become applicable, and that the boundary is to follow, at a distance of 10 marine

leagues, and, even through this sea of mountains, the sinuosities of the coast. The latter phrase is, moreover, interpreted as requiring the line to be deflected inland on the occurrence of every inlet, so that it shall in no place be less than 10 marine leagues from salt water.

The above, in broad outline, are the matters in difference, though a subordinate point may arise as to the manner in which the termination of the water boundary at the head of the Portland Channel is to be connected with the point at which the boundary commences to run by reference to the mountains, or the 10-marine-league limit, as the case may be.

Negotiations at Verona.

App. I, p. 28.

A statement of the British territorial claims having been invited as already mentioned, written instructions were, on the 27th September, 1822, given by Mr. Canning to the Duke of Wellington for his guidance in connection with this question in any discussion which he might have upon the subject with Count Lieven at Verona. These instructions were of a general character, and merely stated that the information with which the Duke had been furnished would enable him sufficiently to prove to the Russian Ministers that Great Britain, through the Hudson's Bay Company, had an equal, if not a superior, claim to that of Russia, and that the British claim extended to many degrees of higher latitude than the 51st parallel. The Duke of Wellington had several discussions with Count Lieven upon the point, in which the extent to which occupation had gone on either side was discussed in general terms; but it was afterwards agreed, as recorded in a despatch of the Duke of Wellington to Mr. Canning of the 29th November, 1822, that the Memoranda recording these discussions should be considered as "non avenues," and that the Russian Ambassador in London should address to Mr. Canning a note in answer to that which Lord Londonderry had addressed to Count Lieven on the Ukase of 1821 being communicated to him.

Ib., p. 32.

Ib., p. 33.

Accordingly, on the 31st January, 1823, Count Lieven wrote to Mr. Canning proposing that on both sides the question of strict right should be provisionally put aside, and that all the differences to which the Ukase had given rise should be adjusted by a friendly arrangement, founded only on the principle of mutual con-

venience, and that such arrangement should be negotiated at St. Petersburg.

In pursuance of this proposal, Mr. Canning, by a despatch of the 5th February, 1823, desired Sir Charles Bagot, the British Ambassador at St. Petersburg, to proceed to open the discussion with the Russian Minister upon the basis of the instructions given to the Duke of Wellington.

Negotiations at St. Petersburg.

App. I, p. 34.

Owing, however, to a doubt as to the position taken by the United States with regard to this territory, negotiations were not actually commenced till the following year. Sir Charles Bagot stated verbally to Count Nesselrode in August 1823, that he believed the British pretensions had always extended to the 59th parallel, but that a line of demarcation drawn at the 57th would be quite satisfactory. In two conversations which he had later with M. Poletica, who, in the absence of Count Nesselrode, was empowered to represent the Russian Government, Sir Charles Bagot gave him to understand that the British Government would be satisfied to take Cross Sound, lying about latitude $57\frac{1}{2}^{\circ}$, as the boundary between the two Powers on the coast, and a meridian drawn from the head of Lynn Canal as the boundary in the interior of the continent. In reply, Sir Charles Bagot understood M. Poletica to suggest the 55th degree as that which Russia would desire to obtain as her boundary, and to intimate that it would be with extreme reluctance that Russia would consent to any demarcation which would deprive her of her establishment at Novo-Archangelsk (Sitka).

Ib., p. 45.

Ib., p. 48.

Ibid.

In January 1824, Sir Charles Bagot received new instructions to proceed with the negotiations, and on the 16th February had his first conference upon this question with the Russian Plenipotentiaries, Count Nesselrode and M. Poletica. He then proposed as the boundary a line drawn through Chatham Straits to the head of Lynn Canal, thence north-west to the 140th degree of longitude, and thence along that degree of longitude to the Polar Sea.

Ib., p. 59.

Ib., p. 66.

In reply, the Russian Plenipotentiaries at the next meeting offered a counter-proposal, which was afterwards, at Sir Charles Bagot's request, reduced into writing. By this counter-proposal, the Russian Plenipotentiaries proposed the 55th degree of north latitude as the line of demarcation on the north-west coast of America, being the

Ib., p. 69.

limit which the Emperor Paul had assigned to the Russian possessions by his Charter to the Russian-American Company. Further, as that parallel cut Prince of Wales Island in its southern extremity leaving out of the Russian dominions two points of land, it was proposed that these two points should be comprised within the Russian limit, in order to avoid an inconvenient division. To complete the line and make it as distinct as possible, the Russian Plenipotentiaries expressed a desire to make it follow the Portland Channel as far as the mountains which skirt the coast ("jusqu'aux montagnes qui bordent la côte"). From that point they suggested that the boundary should run along those mountains in a direction parallel ("parallèlement") to the sinuosities of the coast as far as the 139th degree of longitude. It was explained that the principal motive which forced Russia to insist on the sovereignty of this fringe (*lisière*) on the continent from the Portland Channel northwards was that without that territory the Russian-American Company would have no means of maintaining their establishments, which would be thenceforth without a "point d'appui," and which would have no solidity. In return Russia offered the free navigation of all rivers which emptied themselves into the ocean within that fringe.

There are certain observations which have to be made upon the terms of this proposal. In the first place, it is clear that the limit in point of latitude which Russia was claiming in principle was the 55th parallel, and that it was only put further south so far as necessary to include two promontories on Prince of Wales Island, and to reach on the mainland a boundary marked by a channel. In the second place, it is clear that the island which they understood as Prince of Wales Island was the large island so marked on the map, the two southern extremities of which would be cut off by the 55th parallel of latitude. In the third place, the extent and the function assigned to the *lisière* which Russia desired to possess, are worthy of note. It was to be a mere fringe, as a protection and a "point d'appui." It will be found that this conception of the *lisière* was not departed from.

App. I, p. 70.

In reply to this counter-proposal, Sir Charles Bagot delivered an amended proposal in which he expanded the description which the Russian

Plenipotentiaries had given of their proposed line. He described this line as being traced from the southern extremity of Prince of Wales Island to the embouchure of the Portland Canal, thence by the middle of that canal until it (the line) touched "la terre ferme," thence to the mountains which skirt the coast, and so on.

Sir Charles Bagot continued his despatch by pointing out that the adoption of this line would deprive His Britannic Majesty of the sovereignty of all those coves and little bays which lie between latitudes 56° and $54^{\circ} 45'$. On this it is to be observed that the embouchure of Portland Canal as contended for by Great Britain was ascertained by Vancouver to lie in latitude $54^{\circ} 45\frac{1}{2}'$. It is further to be remarked that Sir Charles Bagot does not appear to have considered that the concession of the boundary proposed by the Russians would have deprived the British of all the inlets above the 56th degree of latitude.

In this amended proposal Sir Charles Bagot App. I, p. 71. suggested a line drawn along the middle of the channel which separates Prince of Wales Island and what was then known as the Duke of York's Island from the islands to the north of them, until it touched the mainland; thence in the same direction 10 marine leagues inland; thence northerly parallel to the sinuosity of the coast.

In their reply to Sir Charles Bagot's amended proposal, the Russian Plenipotentiaries re-stated their reasons for proposing as the boundary on the coast of the continent to the south Ibid. ("sur la côte du continent au sud") the Portland Canal, the origin of which inland ("dans les terres") they said was at the 56th degree of north latitude, and to the east the chain of mountains which followed at a very little distance the sinuosities of the coast. They observed that this would leave for British expansion (1) all that part of the coast ("de la côte") situated between the embouchure of the Portland Canal and the 51st parallel, contemplated as the boundary in the Ukase of 1821; and (2) all the territory situated between the English establishments at the 54th parallel and the origin of the Portland Canal.

From the language held by the Russian Plenipotentiaries in making this proposal, it is perfectly clear that they did not regard the

coast ("la côte"), as the word was used by them in these negotiations as extending up the waters of Portland Canal. Had they done so, it would have been impossible to describe the Portland Canal as the boundary on the coast of the continent to the south, nor would they have described their proposals as leaving free to British expansion all the part of the coast ("toute la partie de la côte") which lay between the embouchure of Portland Canal and the 51st parallel. Nor, again, would they have described the Portland Canal as having its origin inland ("dans les terres").

App. I, p. 72.

Sir Charles Bagot did not give way to the arguments of the Russian negotiators, but repeated his amended proposal (modified so as to give Prince of Wales Island to Russia). This the Russian Plenipotentiaries declined to accept, repeating that the possession of Prince of Wales Island without a portion of territory on the coast situated opposite that island ("sur la côte située vis-à-vis de cette île") would be of no use to Russia.

Ib., p. 74.

Ib., p. 66.

Ib., p. 75.

At this point Sir Charles Bagot suspended the negotiations, and by a despatch dated the 29th March, 1824, reported to Mr. Canning the communications which had taken place. A despatch dated the 17th April, 1824, was also addressed by Count Nesselrode to Count Lieven, in which he summarized and repeated the views he had pressed upon Sir Charles Bagot. He speaks of his proposal to make the southern frontier of the Russian dominions terminate upon the continent ("aboutir sur le continent") at Portland Canal, of which he says "l'embouchure dans l'Océan" is in the latitude of Prince of Wales Island and the origin inland between the 55th and 56th degrees of latitude. From his language here it is again obvious that in his view the shore at Portland Canal is not "coast" and its waters are not "ocean."

In the same despatch Count Nesselrode emphasizes again and again the slender character of the *lisière* which it was desired that Russia should possess. He describes it as merely "une étroite lisière sur la côte même," "une simple lisière du continent," "un médiocre espace de terre ferme" only required to enable Russia to make use of—nay, to avoid losing—the neighbouring islands ("le moyen de faire valoir—nous dirons plus, de ne pas perdre—les îles environnantes").

Russia, he says in conclusion, only reserves to herself a "point d'appui," without which it would not be possible for her to preserve half her dominions.

The Russian proposals were laid by Mr. Canning before the Hudson's Bay Company, and on receipt of their Report Mr. Canning wrote to Count Lieven on the 29th May, 1824, announcing that Sir Charles Bagot's discretion would be so far enlarged as to enable him to admit with some qualifications the terms last proposed by the Russian Government. The qualifications would consist chiefly in a more definite description of the limit to which the strip of land required by Russia on the continent was to be restricted, in the selection of a somewhat more western degree of longitude, as the boundary to the northward of Mount Elias, and in precise and positive stipulations for the free use of rivers, &c.

On the 12th July, 1824, the instructions referred to were sent to Sir Charles Bagot, with a draft Convention to which he was authorized to consent. Articles II and III of this draft Convention were as follows :—

" ARTICLE II.

" La ligne séparative entre les possessions des deux Hautes Parties Contractantes sur le continent et les Iles de l'Amérique du Nord-ouest sera tracée de la manière suivante :—

" En commençant des deux points de l'isle dite du *Prince de Galles*, qui en forment l'extrémité méridionale, lesquels points sont situés sous le parallèle de 54° 40' et entre le 131° et le 133° degré de longitude ouest (méridien de Greenwich), la ligne de la frontière, entre les possessions Britanniques et Russes remontera, au nord, par la passe dite le *Portland Channel* jusqu'à ce qu'elle touche à la côte de la terre ferme située au 56° degré de latitude nord. De ce point elle suivra cette côte, parallèlement à ses sinuosités, et sous ou dans la base vers la mer des montagnes qui la bordent jusqu'au 139° degré de longitude ouest du dit méridien. Et de là, la susdite ligne méridionale du 139° degré de longitude ouest en sa prolongation jusqu'à la Mer Glaciale formera la limite des possessions Britanniques et Russes sur le dit Continent de l'Amérique du Nord-Ouest.

" ARTICLE III.

" Il est convenu, néanmoins, par rapport aux stipulations de l'Article précédent—

" 1. Que la susdite lisière de côte sur le Continent de l'Amérique formant la limite des possessions Russes ne doit, en aucun cas, s'étendre en largeur depuis la mer vers

l'intérieur, au delà de la distance de lieues maritimes
à quelque distance que seront les susdites montagnes.

"2. Que les sujets Britanniques navigueront et commerceront librement à perpétuité sur la dite lisière de côte, et sur celle des îles qui l'avoisinent.

"3. Que la navigation et le commerce des fleuves du continent traversant cette lisière seront libres aux sujets Britanniques tant à ceux habitant ou fréquentant l'intérieur de ce continent qu'à ceux qui aborderont ces parages du côte de l'Océan Pacifique."

App. I, p. 85.

By the covering despatch it was left to Sir Charles Bagot to agree to a distance (left blank in Article III of the draft) to which the breadth of the *lisière* was to be limited, provided that he was not authorized to agree to a greater distance than 10 marine leagues. The covering despatch also shows that this provision was due to the uncertainty as to the real position of the mountains which appeared almost to border the coast.

The Russian Plenipotentiaries delivered a counter-draft, in which Articles I and II were as follows :—

"ARTICLE I.

Ib., p. 94.

"La ligne de démarcation entre les possessions des deux Hautes Parties Contractantes sur la côte nord-ouest de l'Amérique et les îles adjacentes sera tracée ainsi qu'il suit :—

"A partir des deux points qui forment l'extrémité méridionale de l'île dite du Prince de Galles, laquelle appartiendra toute entière à la Russie, points situés sous le parallèle du 54° 40' de latitude nord et entre les 131° et 133° degrés de longitude ouest (méridien de Greenwich), la ligne de la frontière entre les possessions Russes et les possessions Britanniques remontera au nord par la passe dite le Portland Channel, jusqu'au point où cette passe se termine dans l'intérieur de la terre ferme au 56° degré de latitude nord. De ce point, elle suivra cette côte parallèlement à ses sinuosités jusqu'au 139° degré de longitude ouest (même méridien) et de là, la frontière entre les possessions respectives sur le Continent Américain sera formée par la ligne du susdit degré de longitude dans sa prolongation jusqu'à la Mer Glaciale.

"ARTICLE II.

"La lisière de la côte nord-ouest appartenante à la Russie depuis le Portland Channel jusqu'au point d'intersection du 139° degré de longitude ouest (méridien de Greenwich) n'aura point en largeur sur le continent plus de 10 lieues marines à partir du bord de la mer."

It will be noticed that, at the commencement of the Article, the possessions of the High Contracting Parties are described as "on the north-west coast of America and the adjacent islands," instead of "on the continent and islands of north-west America," as in Mr. Canning's draft; and in the body of the Article, Portland Channel is described as terminating "*dans l'intérieur de la terre ferme.*" It seems clear that, in the whole course of these negotiations, Count Nesselrode used the term "*côte*" as meaning the general line of the continent.

The draft Convention above examined was App. I, p. 92. declined by Sir Charles Bagot.

In the meantime, Mr. Canning's draft had been submitted to Count Lieven in London, upon which he suggested that the line would be more conveniently drawn along the top ("*la cime*") than along the base of the mountains. He made this suggestion in view of the difficulty which there might be in defining the base of the mountains and of the possibility, having regard to the uncertainty of topographical information with respect to the region in question, that the mountains named might extend to the very edge of the coast. The Memorandum in which Count Lieven embodied this suggestion was enclosed in a despatch from Mr. Canning to Sir Charles Bagot of the 24th July, 1824, in which Ib., p. 90. Sir Charles Bagot was instructed to accept the alteration (if pressed), provided always the stipulation as to the maximum width of the *lisière* was adopted. Before, however, the despatch reached Sir Charles Bagot the negotiations had been suspended by his rejection, as before mentioned, of the Russian draft Convention. At this juncture, Sir Charles Bagot ceased to be the British Ambassador at St. Petersburg, and Mr. Stratford Canning was named by His Britannic Majesty as Plenipotentiary to conclude and sign the Convention desired.

The Final Negotiations.

On the 8th December, 1824, Mr. George Canning addressed a despatch to Mr. Stratford Ib., p. 112. Canning with the necessary instructions for continuing the negotiations. As regards the boundary, he drew attention to the fact that in the draft delivered by the Russian Plenipotentiaries to Sir Charles Bagot all reference to the mountains as a boundary had been suppressed, and that the 10-league limit which had been suggested as a corrective only, in view of the

uncertainty as to the exact position of the mountains, had been adopted as the general rule. Mr. Stratford Canning was instructed that this could not be assented to ; but he was empowered, where the mountains were the boundary, to accept the summit, and not the seaward base, as the line of demarcation. A draft "projet" was inclosed to serve as a guide in drawing up the Convention.

Article III of the draft accordingly submitted to the Russian Plenipotentiaries ran as follows :—

App. I, p 122.

"La ligne de démarcation entre les possessions des Hautes Parties Contractantes situées sur le continent et les Isles de l'Amérique nord-ouest sera tracée ainsi qu'il suit :—

"Commençant du point le plus méridional de l'Isle dite *Prince of Wales*, lequel point se trouve sous le parallèle de 54 degrés 40 minutes, et entre le 131^{me} et le 133^{me} degré de longitude ouest (méridien de Greenwich), la dite ligne remontera au nord (l'Isle Prince of Wales appartenant en entier à la Russie) le long de la passe dite *Portland Channel*, jusqu'à ce qu'elle touche à la côte de terre ferme au 56^{me} degré de latitude Nord ; depuis ce point-ci, où la ligne de démarcation touche au 56^{me} degré, elle suivra la crête des montagnes dans une direction parallèle à la côte jusqu'au 141^{me} degré de longitude Ouest (même Méridien).

* * * * *

"Pourvu néanmoins, que si la crête des susdites montagnes, dans quelque partie que ce soit, de leur étendue se trouvera située à plus de dix lieues maritimes de la Mer Pacifique, la ligne de démarcation pour cet espace sera une ligne parallèle aux sinuosités de la côte, de manière que la dite ligne de démarcation ne sera en aucune partie à plus de dix lieues de la côte.

"Il est, de plus, convenu que nul établissement ne sera formé par l'une des deux parties dans les limites assignées par cet Article à l'autre ; les sujets Britanniques ne formeront aucun établissement, soit sur la côte, soit sur la lisière de terre ferme comprise dans les limites des possessions Russes, telles qu'elles sont désignées par cet Article ; et, de même, nul établissement pareil ne sera formé par des sujets Russes au delà des dites limites."

The Russian negotiators amended the language of Mr. Stratford Canning's draft, which, as recast by them, read as follows :—

"ARTICLE III.

Ib., p. 125.

"La ligne de démarcation entre les possessions des Hautes Parties Contractantes sur le continent et les Isles de l'Amérique Nord-Ouest sera tracée ainsi qu'il suit :—

"A partir du point le plus méridional de l'Isle dite *Prince of Wales*, lequel point se trouve sous la parallèle du 54 degrés 40 minutes de latitude nord et entre le 131^{me}

et le 133^{me} degré de longitude ouest (méridien de Greenwich), la dite ligne remontera au nord le long de la passe dite *Portland Channel* jusqu'à l'endroit où cette passe se termine dans l'intérieur de la terre ferme au 56^{me} degré de latitude nord—depuis ce dernier point la ligne de démarcation suivra la crête des montagnes dans une direction parallèle à la côte, jusqu'au point d'intersection de 141^{me} degré de longitude ouest (même méridien).

“ARTICLE IV.

“Il est entendu—

“1. Que l'île dite *Prince of Wales* appartiendra tout entière à la Russie.

“2. Que la lisière de côte mentionnée ci-dessus, qui doit appartenir à cette même Puissance et remonter de la parallèle du 56° de latitude nord au point d'intersection du 141° de longitude ouest, aura pour limites la crête des montagnes ainsi qu'il a été dit plus haut, mais que partout où la distance entre la crête des montagnes et la mer se trouverait de plus de dix lieues marines, la limite de cette même lisière sera formée par une ligne parallèle aux sinuosités de la côte, et qui ne pourra jamais s'éloigner de la mer que de dix lieues marines.

“3. Qu'à partir du point d'intersection du 141° degré de longitude ouest, la ligne de ce même degré formera dans son prolongement vers la Mer Glaciale la frontière entre les possessions respectives des Hautes Parties Contractantes.”

It is to be observed that the *lisière* in this draft is treated as commencing not at the mouth of Portland Channel but at the 56th parallel.

On the 1st March Mr. Stratford Canning App. I, p. 130. wrote that he had signed the Convention. He described the line of demarcation as laid down agreeably to Mr. George Canning's directions, notwithstanding some difficulties raised by the Russian Plenipotentiaries. The communications which passed between Mr. Stratford Canning and the Russian Plenipotentiaries do not seem to have been recorded further than appears by the drafts above-mentioned.

On the 13th March Count Nesselrode addressed a despatch to Count Lieven transmitting the ratification of the Convention concluded with Mr. Stratford Canning. Count Lieven was instructed, when exchanging this instrument for that to be delivered by the British Government, to observe to Mr. G. Canning that it would, in the opinion of His Imperial Majesty, have been more in accordance with the principles of mutual justice and reciprocal convenience to give as a

frontier to the *lisière* of coast which Russia was to possess from the 56th degree of north latitude to the point of intersection of the 141st meridian of west longitude the crest of the mountains which follow the sinuosities of the coast. This stipulation would have assured to the two Powers a perfect equality of advantages and a natural limit. England would have profited wherever the mountains were less than 10 marine leagues from the sea, and Russia wherever the distance separating them from it was greater. It appeared to Russia, Count Nesselrode said, that in the case of countries the geography of which was still little known it was impossible to propose a more equitable arrangement.

It is clear from this despatch that it was well understood that in no event would the boundary run further from the sea than the summit of the mountains, that the 10-league limit was inserted to provide for the contingency that these summits might be more than 10 leagues inland, and that the summits were selected instead of the base as giving the dividing line—to provide for the contingency that the base might run down to the sea itself.

App. I, p. 135.

In reporting to Count Nesselrode the exchange of the ratifications, Count Lieven stated that he had made a point of observing to the Secretary of State how rigorous the limitations insisted on by Great Britain appeared to the Imperial Government.

CHAPTER II.

DIPLOMATIC ACTION SINCE 1825.

During the period for which the country now known as Alaska remained part of the Russian dominions—that is to say, till 1867,—nothing occurred to bring up the question of the application, upon the spot, of the boundary prescribed by the Treaty of 1825, except a difficulty as to passage up the Stikine River (dealt with hereafter), which concerned rather the right of navigation than the location of the boundary.

In 1871 British Columbia was incorporated into Canada. No survey of the boundary-line between that province and Alaska had ever been made, and the whole region was then unknown and practically inaccessible. The Dominion Government, however, at once took steps in the direction of getting the boundary ascertained. On the 11th July, 1872, the Lieutenant-Governor of British Columbia forwarded to the Dominion Government the copy of an address to him from the provincial Legislative Assembly reciting that the boundary-line between the adjoining territories of Alaska and the Province of British Columbia had never been properly defined, and requesting, especially in view of the probable development of mining operations in the northern part of that province, that the Dominion Government should take some action at an early date to have the boundary properly laid down.

1871.

The Dominion Government acceded to this request in a Report of a Committee of the Privy Council approved by the Governor-General on the 20th September, 1872. This Report was forwarded

1872.

to Her Majesty's Government, and Sir Edward Thornton, British Ambassador at Washington, was instructed to approach the United States' Government upon the subject. A despatch

Ib., p. 163.

from Sir Edward Thornton to Earl Granville of the 18th November, 1872, shows that he had mentioned the matter to Mr. Fish. The result of this communication was that the President, in his annual Message to Congress on the 2nd December, 1872, recommended the

Negotiations for Delimitation of Boundary,
begun November 1872.

Ib., p. 164.

Failure of United States' Congress to
provide for Survey.

1873.

App. I, p. 166.

Ib., p. 168.

Mr. Fish suggests Delimitation at River
crossings.

Ib., p. 173.

Major Cameron's Report.

1875.

Ib., p. 179.

appointment of a Commission "to act jointly with one that may be appointed on the part of Great Britain to determine the line between the territory of Alaska and the co-terminous possessions of Great Britain." On the 17th December, 1872, a Bill to provide for the determination of the boundary-line was laid before Congress and read a second time. The proposal, however, fell through on account of the unwillingness of the United States to incur the necessary expense.

On the 12th February, 1873, Mr. Fish informed Sir Edward Thornton that the cost of the survey would be about 1,500,000 dollars for the United States alone, and that it could not be completed in less than nine years in the field and one in the office. He suggested that it would be sufficient to decide upon some particular point, such as the head of Portland Canal, the points where the boundary crosses the Rivers Shoot, Stakeen, Taku, Iselcatt and Chelkaht, Mount St. Elias, and the points where the 141st meridian crosses the Rivers Yukon and Porcupine.

Sir Edward Thornton's despatch referring to Mr. Fish's statement was communicated to the Canadian Government; and by a despatch of the 27th November, 1873, the Governor-General requested Major Cameron, Her Majesty's Boundary Commissioner, to furnish an approximate estimate of the cost and of the time required for carrying out the objects of any Commission that might be appointed to determine and define the boundary-line between British Columbia and Alaska. Major Cameron was supplied with a copy of Sir Edward Thornton's despatch, and later with a Memorandum made by Mr. J. S. Dennis, the Surveyor-General of the Dominion, in which the cost of a survey, limited in the sense suggested by Mr. Fish, was discussed.

On the 18th February, 1875, Major Cameron sent in his Report, in which he exhaustively discusses the relative difficulty and cost of the proposed survey, whether limited as proposed by the United States or carried along the whole boundary. With reference to the scope of the survey, he makes the following observations:—

"While the United States' Government have indicated a definite plan of procedure, and named the points of the boundary which they consider it essential

should be marked; the Government of Canada make no reference to such details, and, therefore, leave it to be assumed that they expect the terms of the Treaty to be fully and strictly carried out.

"The cost of marking the line will be seriously affected by the view which may prevail on this subject."

No action was taken on Mr. Fish's suggestion or upon the reports of Mr. Dennis and Major Cameron.

In 1875, a question having arisen as to whether certain settlers on the Stikine River were in British or United States' territory, the boundary again formed the subject of discussion between Sir Edward Thornton and Mr. Fish. A despatch from Sir Edward Thornton to Lord Derby, dated the 27th September, 1875, records that Mr. Fish had communicated to him a couple of letters received from the United States' Collector of Customs at Sitka, in which it was alleged that the point where the settlement was established was below the British custom-house on the Stikine, which custom-house was also supposed to be within United States' territory, that is within 10 marine leagues from the coast. Mr. Fish then asked Sir Edward Thornton what he thought could be done to settle the question of jurisdiction. Sir Edward Thornton replied that the occurrence went to prove the wisdom of the recommendation of Her Majesty's Government that no time should be lost in laying down the boundary between the two territories. As it was, he said he could see no way of deciding the question except by sending officers on behalf of each country to take observations and determine on whose territory the new settlers had established themselves. He observed that when the question of laying down the boundary was discussed about two years before, it was suggested that if the whole survey could not be made the points where the territory met could be fixed on the rivers which run through both of them. Mr. Fish replied that even for this partial survey he feared it would be difficult to obtain the necessary grant during the next session of Congress, but he suggested that as the weight of evidence seemed at present to be in favour of the point in question being in United States' territory, the settlers should be called upon to suspend operations for the present and until the question of territory could be decided.

Settlers on Stikine River—Boundary discussion.

1875.

App. I, p. 183.

Sir Edward Thornton presses for Survey.

Ib., p. 183.

Unwillingness of United States' Congress to provide for even partial Survey.

Ib., p. 183.

This despatch was laid before a Committee of the Privy Council of Canada, who reported that, in view of the circumstances represented by Mr. Fish, the Government deemed it desirable that an officer should be sent by the Government of Canada or of British Columbia to ascertain whether the settlement alluded to and the British custom-house were within British territory. The Report points out that by the terms of the Treaty that portion of the boundary extending from the 56th degree of north latitude to the intersection of the 141st degree of west longitude followed the summits of the mountains which extended in a direction parallel to the coast, and should these summits prove to be more than 10 marine leagues from the ocean the line should be drawn parallel to the windings of the coast, and should never exceed a distance of 10 marine leagues therefrom. The Report further points out that, as the line rested on so intricate a basis, a satisfactory solution could only be arrived at by accurately defining the point where the boundary intersects the Stikine River, and concludes with a recommendation that this point, if no other, should at once be settled.

The Case of Peter Martin.

1876.

In 1876 attention was again drawn to the Stikine River by the case of a convict named Peter Martin, in charge of Canadian constables, who had committed an assault upon one of them, for which he was tried and convicted in the British Columbian Court, at a point upon the Stikine alleged to be upon the United States' territory. A question also arose as to whether an establishment kept by a Canadian named Choquette on the same river was situated on British or United States' territory.

Canadian Government sends Engineer to locate approximate boundary on Stikine River.

App. I, p. 224.

Under these circumstances, the Canadian Government, in March, 1877, sent Mr. Joseph Hunter, an engineer, to the Stikine River with instructions to ascertain with approximate accuracy the boundary on the said river between Canada and Alaska. His instructions, which were signed by Mr. Dennis, the Surveyor-General of the Dominion already mentioned, required him to lay down with approximate accuracy the crossing of the river (should the same occur within 10 marine leagues of the coast) by a line, in the words of the Treaty, "following the summit of the mountains parallel to the coast." The instructions further stated that it was assumed that the point on the river where the

line would cross, connecting the two highest peaks of the mountains situate parallel to the coast adjoining on either side of the river (if within the distance of 10 marine leagues from the coast, measured and estimated on a course at right angles to the general bearing thereof opposite), would give the crossing of the river by the international boundary at that point.

A tracing was inclosed showing such general direction, and embracing 30 miles on each side of the Stikine, such general direction being taken as north 32° west, or south 32° east true. Mr. Hunter was required, therefore, "to lay off or estimate the 10 marine leagues on a course at right angles thereto, or north 58° east."

In his Report, dated June 1877, Mr. Hunter stated that the crossing of the river by a line following the summit of the mountains parallel to the coast was situated at 19.13 miles from the coast, in a direction at right angles thereto.

Peter Martin had, in any view, been conveyed in custody through United States' territory, and he was therefore set at liberty.

The above facts and documents are referred to as showing that, when there was a question of applying the Treaty boundary on the spot, the Canadian Government put forward their view in strict accordance with the Treaty, working from the general direction of the coast-line, and acting on the principle that the 10 marine leagues line was to be applied only in the absence of mountains within that limit.

By a note dated the 15th January, 1877, Sir Edward Thornton, referring to the case of Mr. Choquette, above mentioned, had again drawn the attention of Mr. Fish to the expediency of defining the boundary. In this note Sir Edward Thornton makes use of the following language :—

"The general impression with regard to the boundary seems to be as follows: The Russian Convention of 1825 places it on the summit of the coast range of mountains when within 10 marine leagues, and when that range is not within 10 marine leagues then at the 10 marine leagues from the coast, but under no circumstances further in the interior. The coast range rises immediately from tide waters, and the summit of that range appears to be within 15 miles of the sea. This is shown by the fact that in the following up the valley of the Stikine, the axis of the range is passed at 15 miles from the coast; to this distance from the sea the course of the river bears easterly,

Engineer's Report on Survey at Stikine.

App. I, p. 226.

1877.

Sir Edward Thornton again presses for definition of the Boundary.

ib., p. 202.

1877.

thence rounding the range in question northerly, receiving four or five glaciers which flow in an easterly direction from the summit of the range in the valley of the Stikine.

Sir Edward Thornton then proceeds to point out that these were facts which could not be positively decided without an actual survey. He stated that he had been instructed to urge upon the Government of the United States to unite in a joint Commission to determine the point where the boundary intersected the Stikine River and on such other points on the boundary-line as might be considered advisable. In the meantime the *status quo* should be maintained. In conclusion, he added that if there were reasons which prevented the Government of the United States from agreeing to steps being taken for settling the boundary-line, Her Majesty's Government hoped that at least it would agree to some arrangement or *modus vivendi* by which no fresh claim injurious to either could be raised or strengthened.

App. 1, p. 219.

Congress again fails to provide for Survey.

Great Britain again presses for delimitation of Boundary.

Ib., p. 235.

Ib., p. 236.

Sir Edward Thornton again makes representations.

Ib., p. 238.

Mr. Seward suggests provisional line.

Ib., p. 238.

In reply to this note, Mr. Fish, on the 20th February, 1877, informed Sir Edward Thornton that the attention of Congress had been requested to the subject. Congress, however, separated without any action having been taken.

On the 1st October, 1877, Mr. Plunkett, the British Chargé d'Affaires at Washington, wrote to Mr. Evarts, who had succeeded Mr. Fish, again asking to have the matter brought to the notice of the United States' Government. Mr. Evarts, on the 10th October, 1877, replied that the subject would again be brought to the attention of Congress upon its reassembling.

On the 13th December, 1877, Sir Edward Thornton called at the State Department in Washington for the purpose of again urging on Mr. Evarts the expediency of taking measures to settle the boundary. Not finding Mr. Evarts, he spoke to Mr. Seward, who suggested that, with regard to the Stikine, a provisional boundary might be arranged by an engineer on each side. Upon this suggestion being brought to the attention of the Canadian Government, it was recommended by a Committee of the Privy Council that Sir Edward Thornton be informed that the Canadian Government had already sent Mr. Hunter to the spot, and that copies of his Report had been sent to the British Legation and for the Department of State at Washington.

On the 19th January, 1878, Sir Edward Thornton transmitted to Mr. Evarts a copy of Mr. Hunter's Report, accompanied by a map showing the points where the boundary crossed the river, and inquired whether the Government of the United States would accept the boundary so ascertained until the exact line could be regularly determined. By a note of the 20th February, 1878, Mr. Evarts accepted this temporary arrangement, provided it was understood that it was not to be construed as affecting in any manner the rights under the Treaty to be determined whenever a joint survey should be made.

App. I, p. 241.

1878.

Hunter's line on Stikine accepted provisionally.

Ib., p. 242.

Having regard to the proviso subject to which this arrangement was accepted by the United States' Government, Mr. Hunter's survey has no binding effect. The incident is, however, of importance in that it brought to the attention of the United States' Government the manner in which it was considered on the side of Great Britain the Treaty ought to be applied.

No further communications of importance with respect to this subject took place between the two Governments until 1884, when the question entered on a new phase. On the 24th April in that year Mr. Dall, an officer of the United States' Survey, writing semi-officially to Mr. Dawson, the Director of the Geological Survey of Canada, advanced the theory that a boundary according to the Treaty was impossible. "There being," he wrote, "no natural boundary, and the continuous range of mountains parallel to the coast shown on Vancouver's Charts having no existence as such, the United States would undoubtedly wish to fall back on the line parallel to the windings of the coast, and which shall never exceed the distance of 10 marine leagues therefrom of the Treaty. It would, of course, be impracticable to trace any such winding line over that 'sea of mountains.'"

Mr. Dall's letter to Mr. Dawson.

1884.

Ib., p. 248.

The idea put forward by Mr. Dall was adopted by the Government of the United States. In a despatch addressed to Mr. Phelps, the United States' Ambassador in London, on the 20th November, 1885, Mr. Bayard, the United States' Secretary of State, referred to the question of the Alaskan boundary. He said the boundary agreed upon by the Treaty of 1825 was then, and still was, a theoretical one, based on the charts

Mr. Dall's idea adopted by United States' Government.

Ib., p. 251.

1885.

Mr. Bayard's views.

the negotiators had before them. He stated that he was not aware that any question had arisen with regard to it between Great Britain and Russia before 1867, and that it was certain that none had arisen since between the Governments of Great Britain and the United States. Dealing with the water boundary at the south of the line, he treated Portland Channel as lying to the south of Wales Island—a conclusion which he apparently based on the assumption that the Prince of Wales Island referred to in the Treaty was the island now (but not in 1825) known as Wales Island.

With regard to the eastern boundary Mr. Bayard wrote as follows:—

“There is, however, ample ground for believing that the erroneous premises upon which the negotiators apparently based their fixation of the inland boundary-line along the coast render its true determination and demarcation by monuments a matter of doubt and difficulty in carrying it into practical effect; and that, in prevision of the embarrassments which may follow delay in the establishment of a positive frontier line it is the interest and the duty of the two Governments to reach a good understanding which shall forthwith remove all chance for future disagreement.”

Views of United States' Government
communicated to Great Britain.
1886.

App. I, p. 254.

On the 19th January, 1886, Mr. Phelps, in formally communicating to the Marquis of Salisbury the views of his Government, observed that the boundary indicated by the Treaty had no apparent ambiguity, but that it was described and established when the region through which it ran was entirely unexplored. With reference to the 10-marine league line, he writes as follows:—

“The only other indication of this part of the boundary contained in the Treaties, the limit of 10 marine leagues from the ocean, equally fails of practicable location. The coast proves, upon survey, to be so extremely irregular, and indented with such and so many projections and inlets, that it is not possible, except at immense expense of time and money, to run a line that shall be parallel with it, and if such a line should be surveyed, it would be so confused, irregular, and inconsistent, that it would be impossible of practical recognition, and would differ most materially from the clear and substantially straight line contemplated in the Treaties.”

Mr. Phelps added, as the result of the whole matter, that

“These Treaties * * * * really give no boundary at all so far as this portion of the territory is concerned.”

The despatch concluded by suggesting that a Commission be agreed on to acquire materials to serve as a basis for the establishment of a boundary-line by Convention.

In the note above referred to, Mr. Phelps had asked to be furnished with a copy of a certain map of the Dominion of Canada geologically coloured, which had been referred to by Mr. Bayard. In forwarding this map on the 27th August, 1886, the Earl of Iddesleigh draws Mr. Phelps' attention to the fact that the Alaska boundary shown therein was merely an indication of the occurrence of a dividing-line somewhere in that region. It would, wrote his Lordship, be clearly understood that no weight could attach to the map location of the line denoted, inasmuch as the Convention between Great Britain and Russia made its location dependent on alternative circumstances, the occurrence or non-occurrence of mountains, and, as was well known to all concerned, the country had never been topographically surveyed. The note ended by a distinct disavowal on the part of Her Majesty's Government of the correctness of the line shown.

In view of the importance which has been attached in the present controversy to the location of the line in a number of maps (to be referred to elsewhere in this Case), it is important to direct attention to the language held by Lord Iddesleigh on this, the first occasion, when such a map was handed by a Representative of the British to a Representative of the United States' Government, and immediately after the problems presented by the topography had attracted attention. In fact, the line depicted upon this map was of the character which had been recently described by Mr. Bayard as conjectural and theoretical.

No survey was made as suggested by Mr. Phelps.

In 1887 the attention of Her Majesty's Government was drawn to the report made by Lieutenant Schwatka, of the United States' army, of a military reconnaissance conducted by him in Alaska in 1883, in which he stated that he had traversed Perrier Pass, and used language implying that it defined the boundary. Acting on instructions from his Government, Sir Lionel West, the British Ambassador at Washington, by a note dated the 14th September, 1887, pointed

Geological Map of Canada.

App. I, p. 255.

Lieutenant Schwatka's Reconnaissance.

1887.

Ib., p. 257.

The Dawson-Dall Conferences.

1887-88.

Report of Conferences laid before Congress.

50th Congress,
2nd Sess., Sen.
Ex. Doc., No. 146.

Atlas.
App. II.
Map. No. 34.

1888. Proposed trail over White Pass.

App. I, p. 264.

Canada's Protest.

Ib., p. 265.

out to Mr. Bayard that this was not admitted by Great Britain.

During the Fisheries negotiations between Great Britain and the United States, held at Washington in 1887-88, several informal Conferences took place, at the request of the British Commissioners, between Messrs. Dall and Dawson, at which the possibility of agreement upon certain conventional lines was discussed, but no result was reached from the report of these experts, the United States' Commissioners taking the ground that their powers did not authorize them to treat for an adjustment of the Alaska boundary.

The Report of these Conferences was laid before Congress by the President of the United States, and this document included a letter from Dr. Dawson, in which the Canadian contention as to the line crossing inlets is clearly put forward, and a letter in which this contention is combated with vigour by Mr. Dall, the American expert.

This Report contained a map showing how the boundary would run in accordance with the views presented by Dr. Dawson. On it the line is clearly marked as crossing the Lynn Canal in the vicinity of Berner's Bay.

This was the first occasion on which the boundary question had been discussed from the point of view of strict right since the topographical questions had emerged.

In June, 1888, information reached the Canadian Government to the effect that certain persons were about to receive a charter from the Alaskan authorities to construct a trail from Lynn Canal by way of the White Pass to the interior of Alaska. In bringing this rumour to the attention of Sir John Macdonald, the then deputy of the Minister of the Interior observed:—

“In view of the well-based contention on our part that the heads of the larger inlets which penetrate that portion of Alaska which consists of the coast-line from Mount St. Elias to Portland Channel, and more particularly the head of Lynn Canal, are within our territory, it would appear to be important to protest against the granting of any rights by the United States or Alaskan Governments at the heads of these inlets.”

The attention of Lord Salisbury was at once called to this matter, and Her Majesty's Minister at Washington instructed to inform the United States' Government that this Report had

reached Her Majesty's Government, by whom it was presumed to be unfounded, "as the territory in question is part of Her Majesty's dominions."

Sir Lionel West, in communicating upon this matter with the United States' Government, omitted to specify precisely the locality to which the report had reference, and Mr. Bayard replied that neither his Department nor, as he stated in a subsequent note, the Department of the Interior had any information as to any proposed action of the character described. App. I, p. 266.

In April, 1891, the attention of the Canadian Government was drawn to a Report of the United States' Coast and Geodetic Survey, in which it was stated that a survey was about to be made under the authority of Congress, which would involve the marking by monuments of a line through the Portland Canal to the 56th degree of latitude, thence north-westerly following as nearly as might be practicable the general trend of the coast at a distance of about 35 miles from it to the 141st degree of west longitude, thence due north to the Arctic Ocean.

Upon this Sir Julian Pauncefote was instructed to remind the United States' Government that the boundary at this point was at that present time the subject of some difference of opinion and of considerable correspondence, and that the actual boundary-line could only be properly determined by an International Commission. Sir Julian Pauncefote accordingly, on the 5th June, 1891, addressed a note to Mr. Blaine in conformity with these instructions. Ib., p. 268.

In February 1892 a Conference took place between Delegates from the Canadian Government and the United States' Secretary of State, relating primarily to the extension and development of trade between the United States and the Dominion. At this Conference an agreement was reached respecting the Alaska boundary, which was embodied in a Convention signed at Washington on the 22nd July, 1892.

The preamble of this Convention recited that the parties were equally desirous of providing for the removal of all possible causes of difference between the respective Governments thereafter in regard to the delimitation of the existing boundary between their possessions in America in respect to such portions of said boundary as

Proposed United States' Survey of
Boundary. 1891.

Through Portland Canal.

The general trend of the Coast.

Great Britain's Protest.

1892.

Convention, 22nd July, 1892.

Ib., p. 269.

might not, in fact, have been permanently marked in virtue of Treaties theretofore concluded.

Article I provided as follows :—

ARTICLE I.

App. I, p. 269.

“The High Contracting Parties agree that a coincident or joint survey (as may be found in practice most convenient) shall be made of the territory adjacent to that part of the boundary-line of the Dominion of Canada and the United States of America, dividing the Province of British Columbia and the North-west Territory of Canada from the territory of Alaska from the latitude of $54^{\circ} 40'$ north to the point where the said boundary-line encounters the 141st degree of longitude westward from the meridian of Greenwich by Commissions to be appointed severally by the High Contracting Parties, with a view to the ascertainment of the facts and data necessary to the permanent delimitation of said boundary-line in accordance with the spirit and intent of the existing Treaties in regard to it between Great Britain and Russia and between the United States and Russia.

“Application will be made without delay to the respective Legislative Bodies for the appropriations necessary for the prosecution of the survey, and the Commissions to be appointed by the two Governments shall meet at Ottawa within two months after said appropriations shall have been made, and shall proceed as soon as practicable thereafter to the active discharge of their duties.

“The respective Commissions shall complete the survey and submit their final Reports thereof within two years from the date of their first meeting.

“The Commissions shall, so far as they may be able to agree, make a Joint Report to each of the two Governments, and they shall also report, either jointly or severally, to each Government on any points upon which they may be unable to agree.

“Each Government shall pay the expenses of the Commission appointed by it.

“Each Government engages to facilitate in every possible way any operations which, in pursuance of the plan to be agreed upon by the Commissions, may be conducted within its territory by the Commission of the other.

“The High Contracting Parties agree that, as soon as practicable after the Report or Reports of the Commissions shall have been received, they will proceed to consider and establish the boundary-line in question.”

Mr. W. F. King was appointed Her Majesty's Commissioner, and the United States appointed Dr. T. C. Mendenhall, afterwards succeeded by General William Ward Duffield. The period for

making this Report was afterwards enlarged to the 31st December, 1895, by a Supplementary Convention signed in February 1894.

Period for making Report extended.
App. I, p. 271.

It is to be observed that the Convention of the 22nd July, 1892, has reference to an existing boundary, and that it provided for the ascertainment of the facts and data necessary to its permanent delimitation in accordance with the spirit and intent of the existing Treaties. In view of contentions which have since been put forward in the course of this controversy, that the claim of the United States receives support from effect having before this date been given to their interpretation of the Treaty of 1825 by maps published or acts done with the acquiescence of Great Britain, it is important to observe that by this Convention the rights of the two Governments concerned are by agreement referred back to the Treaties. The facts and data to be ascertained were to be so ascertained by a joint survey. Previous cartography or acts of settlement were not embraced in the work authorized by the Convention, nor did the Commissioners, who properly confined themselves to the Convention under which they were appointed, report upon such cartography or acts of settlement, if any existed.

The Commissioners presented their Joint Report on the 31st December, 1895, followed in March, 1896, by elaborate maps, a reproduction of which accompanies this Case. The topographical results of their survey are examined elsewhere.

Gold having been discovered in the Valley of the Yukon beyond the passes lying at the head of Lynn Canal, great traffic was attracted to that region in the year 1897. The circumstances of settlement of the disputed territory, and claims based thereon, arising out of this movement, are treated elsewhere. Following these events, Sir Julian Pauncefote, on the 23rd February, 1898, proposed to Mr. Sherman that the determination of the boundary should be referred to three Commissioners, one to be appointed by each Government and the third by an independent Power. He also expressed the hope that, pending such settlement, a *modus vivendi* could be amicably arranged.

The latter proposal was acted upon, and by exchange of notes, it was provided that a provisional boundary should be established.

Report of Commissioners, 31st December, 1895.
Ib., p. 282.
App. III. Portfolio. 1895.

Discovery of gold in the Klondike.
1896.

Rush to the Gold-fields.
1897.

Sir Julian Pauncefote proposes determination of Boundary.
App. I, p. 291. 1898.

Provisional Boundary.
1899.

App. I, p. 305.

Reference to this instrument will show that it was therein expressly provided that it should not affect the rights of either party in reference to the permanent delimitation of the boundary.

A provisional boundary was subsequently arranged on this basis, which is still being acted upon.

Joint High Commission.

1898.

In the autumn of 1898 a Joint High Commission, comprising Representatives of Great Britain and the United States, met at Quebec, and afterwards adjourned to Washington, where it sat till February, 1899. The Commission was constituted with a view to the discussion and adjustment of a number of matters then in question between the two Governments. The business which was to occupy the Commission was arranged at a series of Conferences held at Washington in May, 1898. The Protocol of these Conferences recorded that it was expedient to come to an agreement upon (among other subjects) "provisions for the delimitation and establishment of the Alaskan-Canadian boundary by legal and scientific experts, if the Commission should so decide, or otherwise."

Ib., p. 297.

The Protocol further provided that each Government should communicate to the other, in advance of the meeting of the Commission, a Memorandum of its views on each of the subjects to be discussed.

Ib., p. 298.

Ib., p. 297.

In accordance with the above provision, Sir Julian Pauncefote was instructed to deliver to the Secretary of State at Washington a copy of a despatch of the 19th July, 1898, addressed by the Marquis of Salisbury to the British Commissioner, setting forth the views of Her Majesty's Government. This despatch, after adverting to the existing arrangement at the head of Lynn Canal, pointed out that, as the line there adopted was more than 100 miles from the ocean, Her Majesty's Government could not reasonably be expected to continue to accord it provisional recognition for an indefinite period; and, pending a definite settlement of the question, a provisional line more in accordance with the Treaty stipulations should be adopted, which would allow the occupation by Canada of one of the ports on these inlets.

The despatch referred to the special reasons for an early delimitation of this part of the boundary, and stated that Her Majesty's Government thought it desirable that, if possible, the

Joint Commission should in any case agree on some provisional arrangement for fixing a temporary line on the various inlets and rivers traversing the strip, and also at any other point at which disputes might arise pending a final settlement of the question. It was added that the boundary-line must, in the first instance, be sought in the mountains which border the coast, and that the important condition that the line is nowhere to exceed 10 marine leagues from the coast governed throughout.

The Government of the United States, on Lord Salisbury's despatch being communicated to them, handed to Sir Julian Pauncefote a Memorandum setting forth the views held by App. I, p. 299. them.

This Memorandum pointed out that the Alaskan boundary had already been the subject of conventional arrangements, and that the Report of the Joint Commission was now available, and had made it possible for the Governments to carry out the stipulation in the last clause of Article I of the Treaty of the 22nd July, 1892, to proceed to consider and establish the boundary in question. It was stated that the Government of the United States would expect the Joint High Commission to seek to execute this stipulation by an agreement as to the boundary as fixed by the Anglo-Russian Treaty of 1825 and by the American-Russian Treaty of 1867. The United States' Government, it was added, had no reason to anticipate any other than a definite and satisfactory settlement of this important question by the Joint High Commission.

The Joint High Commission embarked upon its labours under the provision of the two documents just reverted to. The discussions and negotiations which took place were understood to be confidential, and will therefore not be here adverted to. The Commission separated without any settlement being made either upon the basis of right or of convention.

The adjournment of the Commission was followed by proposals to refer the matters in dispute to arbitration, and after a long correspondence the Treaty under which this Tribunal sits was signed at Washington on the 24th January, 1903.

1903.

CHAPTER III.

CHARACTER OF TOPOGRAPHY.

The surveys made by the Commissioners appointed under the Convention of the 22nd July, 1892, disclose the following facts relative to the orography of the region bordering the coast:—

In general character this region is wholly mountainous; though narrow borders of flat land are to be found in the valleys of the rivers and inlets, and occasionally on the ocean front. As a rule, the land rises from the water's edge in steep wooded slopes, forming the frontal foot hills of high mountain ridges, which are surmounted by peaks 3,000 feet or more in height. The summits of these mountains are bare, the timber line not rising to that elevation on any part of the coast in question, and not averaging more than 2,500 feet.

Report of Messrs.
Duffield and King
under Convention
of 1892.
App. I, p. 282.

Further inland the mountains rise to greater heights—to 6,000 or 7,000 feet and upwards—along the southern part of the coast, while to the west of Cape Spencer the very lofty mountains of the Fairweather Range are found rising immediately from the coast. Between Portland Canal and Cape Spencer the mountain barrier is penetrated by the valleys of rivers, streams, and inlets. These valleys run back in a direction nearly perpendicular to the general direction of the coast, and are usually nearly straight for a considerable distance.

Opening into these valleys on either side are subsidiary valleys, also in general approximately straight, and running approximately perpendicular to the directions of the main valleys, and in parallelism to the coast.

The heads of these side valleys thus extending from adjacent main valleys inosculate with one another and so furnish well-defined depressions, which separate the mountain masses adjacent to the coast from those lying further back.

Thus appears a number of short ranges, or elongated mountain masses, of length considerably exceeding their breadth, and lying with their lengths parallel to the general trend of the coast which fronts them.

To an observer passing along the channels which separate the mainland from the adjacent archipelago, these mountains present the appearance of a range, parallel to the coast, which in general hides from his view the mountains behind, which are seen only where the coast mountains are cut across by the valleys above referred to.

At the northern end of Glacier Bay, the Muir Glacier discharges into the sea. The southeastern corner of this glacier also discharges into the Endicott River, which on a very direct eastern course, with very little descent, discharges into Lynn Canal.

Extending in the opposite direction, the northwest arm of Glacier Bay penetrates far inland, and separates the massive range of the Fairweather Mountains, lying north of Cape Spencer, from the mountains of the interior lying between Glacier Bay and the Chilkat River.

Continuing north-westerly from Cape Spencer, the mountains above mentioned rise almost immediately from the ocean, until Alsek River is crossed.

This range is now commonly known as the St. Elias Alps. They lie well back from the shore, leaving a considerable margin of low-lying land between them and the ocean, until Yakutat Bay, and its continuation, Disenchantment Bay, are reached. West of Yakutat Bay lie Mount St. Elias and the mountain ridges between it and the ocean, which are almost submerged in the great Malaspina Glacier.

CHAPTER IV.

THE QUESTIONS TO BE ANSWERED.

FIRST QUESTION.

First Question.

The first question to be answered by the Tribunal is—

Case, p. 3.

“WHAT IS INTENDED AS THE POINT OF COMMENCEMENT OF THE LINE?”

The description in the Treaty of 1825 is—

App. I, p. 38.

“A partir du point le plus méridional de l'île dite *Prince of Wales*, lequel point se trouve sous la parallèle du 54° 40' de latitude nord et entre le 131° et le 133° degré de longitude ouest (méridien de Greenwich).”

The British Case on this head, proceeding, as it is believed, on admitted or indisputable facts, may be stated briefly and in general terms, supported by some references to the overwhelming evidence on which it is based.

Article IV of the Treaty provides—

Ibid.

“Il est entendu, par rapport à la ligne de démarcation déterminée dans l'Article précédent—

“1. Que l'île dite *Prince of Wales* appartiendra toute entière à la Russie.”

Prince of Wales Island.

It is true that an attempt was once made by the United States to apply this language to the island latterly named Wales Island, the southeasterly point of which Vancouver had named Point Wales after a friend.

But it is understood that this contention is no longer pressed, and it will be so treated at present.

App. II. Maps
Nos. 1 and 2.

There can, indeed, be no doubt that “Prince of Wales Island,” wherever it occurs, refers to the large island to the north of Dixon's Entrance shown in Vancouver's charts and described in his book, the main sources of information available to the negotiators. This land was rightly surmised by him to be “much broken and divided by water,” but he did not verify his supposition, and, while calling what was in fact

App. I, p. 147.

a group by the name of "Prince of Wales Archipelago," he showed it in the chart, unsurveyed, as one island. Nor did he fix astronomically the situation of the southern points. It was thus naturally called Prince of Wales Island during the negotiations and in the Treaty.

There are two southern points on this land, shown on the chart—Cape Chacon and Cape Muzon—both within the limits of longitude, and both very near the latitude mentioned in the clause. And, indeed, there is also on Bean Island a small island lying close on the west side of Cape Chacon, a point called Cape Nunez, the latitude of which is now ascertained to be ^{between} ~~below~~ those of the two Capes Chacon and Muzon. This island may be treated as a ^{dependency of Cape Chacon} ~~discrepancy~~, and need not be separately noticed hereafter.

British View.
The Southernmost Point.

Obviously the negotiators, ignorant of the precise latitude, and therefore uncertain of the precise situation, desired to describe whatever point should turn out to be the most southerly. Recent investigations have shown that while Cape Chacon, the more easterly, is in latitude $54^{\circ} 41' 25''$, Cape Muzon, the more westerly, is ^{App. I, p. 285.} in latitude $54^{\circ} 39' 50''$, being thus slightly the more southerly.

Cape Chacon is, in fact, on Prince of Wales Island, the great island of the archipelago, and later formally distinguished by that name; while Cape Muzon, though represented, as from a distance it appeared to Vancouver to be, on a peninsula of that same island, is, in truth, on a separate island close adjoining.

Thus, Cape Chacon is the most southerly point of Prince of Wales Island as now known, and is the point in this sense answering the description. And it might be from one point of view rather more favourable to Great Britain than Cape Muzon.

But Great Britain concedes that it sufficiently appears that Cape Muzon, the more southerly point, fulfils the essential conditions of the Treaty, and should be held to be the point of departure.

And the result is, after all, substantially the same for the purposes in hand, whichever Cape is chosen. For the point under discussion is, in truth, important only as the starting-point of a line which was to leave the whole of Prince of Wales Island to Russia, and which was to

App. I, p. 38.

ascend to the north along the "passe" called Portland Channel. (See Article III: "La dite ligne remontera au nord le long de la passe dite 'Portland Channel.'")

It thus appears (as will be elaborated on the subsequent questions) that if the starting-point should be held to be Cape Muzon, the line should yet, in order that Russia may possess the whole of Prince of Wales Island, hug or be deflected round Cape Chacon, which would thus become a fresh, and the only important, point of departure.

The United States' Contention.

What has been said would suffice as a statement of the British view. But it is understood to be the contention of the United States that the point in question is absolutely governed by the parallel of latitude mentioned later in the description, namely, $54^{\circ} 40'$.

The point so fixed being slightly north of the extremity of Cape Muzon would, of course, but for the later provision that the whole of Prince of Wales Island should belong to Russia, cut off a small part of that cape, but the use of this geographical description avoids all question.

It is not proposed here to anticipate in detail the case of the United States, and Great Britain reserves her right to deal later fully therewith as it may be presented. But it may be proper and convenient that the construction of the Treaty advanced by Great Britain should be at once fortified by a brief summary of the case for taking the geographical, rather than the astronomical, as the governing definition.

Geographical Definition governs.

The order and the terms of the clause of themselves would produce this result; if there be any conflict between the parts, the reading of the sentence shows which part prevails.

Other considerations are these: On the language of the Treaty, the whole of Prince of Wales Island was to belong to Russia. It was intended to define a starting-point, and a line of demarcation was to be drawn therefrom which would leave that island on the Russian side of the boundary.

Accordingly, the southernmost point of Prince of Wales Island was designated as such point. It had not yet been ascertained which was such southernmost point. Therefore, it could be, and was, defined only, but also adequately, by the general geographical description. That descrip-

tion was certain ; for astronomical observations, when taken, would make it so, and *id certum est quod certum reddi potest*. But the ascertainment not having, as yet, taken place, a doubt remained whether the point was to the westward at Cape Muzon, or to the eastward at Cape Chacon.

The result of the determination by observation of one or the other of these points as the more southerly might obviously change the incidence of the line to be drawn thence to the Portland Canal as regards Prince of Wales Island.

The line, if running from the westerly point on a course sensibly to the north of east, might (as, indeed, so running from Cape Muzon it would) cut off some part of Cape Chacon. This result was obviated by the provision with regard to the line of demarcation that the whole of the island should belong to Russia.

Everything thus confirms the view, clearly indicated by the words of the clause, that the geographical description was intended to be, and, in fact, was the true description.

To this description, complete in itself, are added some astronomical indications. These, however, are in form, as necessarily they must have been, general and incomplete. On their face, they do not even profess to fix any point at all. The definition of a point by astronomical co-ordinates demands definite parallels both of longitude and latitude, the intersection of which gives the point. Here the latitude is given as "sous la parallèle du 54° 40' de latitude nord," App. I, p. 38. which tells us whereabouts the latitude of the southernmost point was assumed to be.

It tells us in this case no more than whereabouts; for the words all taken together show that (as the fact was) the exact latitudes of the points were unknown. Had they been known, the southernmost point could and would have been fixed in the Treaty.

So much as to the latitude. But (just because the latitudes being unknown the southernmost point might be either Cape Muzon or Cape Chacon) there could be no attempt even to approximate the longitude, which depended on the unascertained fact. Accordingly, no such attempt was made, and the longitude is stated to be "entre le 131° et le 133° degré de longitude ouest (méridien de Greenwich)." Ib., p. 38.

Thus there is no attempt to fix the point astronomically, for there is no fixed point of

intersection. That point may occur anywhere along about 70 miles of longitude. Where? To answer that question, it would be necessary to revert to the geographical description; and that brings us once again away from the parallel down to the southernmost point of Cape Muzon. The astronomical description is thus fatally defective, and cannot be substituted for or control the complete geographical description.

The astronomical indications thus appear to have been added merely for easier identification of the locality at which the geographical point appeared to be situate, and not, in intent any more than in form, as co-ordinates by which that point could, with the existing knowledge, be at the moment fixed.

Reference to the course of the negotiations, so far as permissible, would confirm this view.

It may be added that, on the mere question of starting-point, there appears, on the theory already suggested when dealing with the geographical description, no substantial difference in practical results between the geographical and the astronomical indications. It is, however, understood that the contention of the United States is raised in order to secure a starting-point on the parallel $54^{\circ} 40'$, with a view to setting up the contention that the line should run for no less than 74 miles along that parallel. This, however, arises on a subsequent question, and, therefore, is here left untouched.

SECOND QUESTION.

Second Question.

Case, p. 3.

The second question to be answered by the Tribunal is—

“WHAT CHANNEL IS THE PORTLAND CHANNEL?”

The words of the Treaty are—

App. I, p. 38.

“La dite ligne remontera au nord le long de la passe dite *Portland Channel*.”

General Statement

Portland Channel.
British View.

The only canal known by the name of Portland at the time of the Treaty had been surveyed, charted, described, and named by Vancouver as Portland Canal, and is so called in the first edition of his book, but changed in the second edition to Portland Channel. The variation seems immaterial.

Reference is made to Vancouver's charts in the Atlas, Nos. 1, 2, and 3, and also to the compiled map, No. 37, in which the various different contentions are shown.

App. II. Maps
Nos. 1, 2, 3.
Ib., Map
No. 37.

Great Britain contends that "la passe dite 'Portland Channel'" means the channel which Vancouver named Portland Canal, and which enters from the ocean between Tongass Island and Kannaghunut Island, leaving Sitklan, Wales, and Pearse Islands on the south and east, and extending northerly 82 miles to its head. Great Britain further contends that if, contrary to the British view, there is to be any departure from the nomenclature and descriptions of Vancouver as the controlling element of decision, then the line should be determined to run up Clarence Strait and Ernest Sound, or up Behm's Canal, on one or other side of Revilla Gigedo, any of which courses would fit the other particulars of description in the Treaty more closely than does Portland Canal.

Postponing the discussion of this alternative suggestion, it is proposed now to state the case on the inquiry as to what was Vancouver's Portland Canal. The answer must depend on the evidence to be found in Vancouver's book and charts, known to have been before the negotiators, and the sole, or, at any rate, the main and best sources of information on this head. To which has to be added whatever evidence may be supplied by the negotiations themselves and a few other then existent maps.

As to the greater part of the length of the Portland Channel above shortly described, there is not, and could not be, any dispute. Reference to the charts will show that, at any rate, that portion of the westerly water which extends inland from the upper end of Pearse Island to the head of the channel marked "Portland Canal" must be comprised in Vancouver's Portland Canal. And this is the common case of both sides. The dispute is as to the remainder of the channel.

Great Britain contends that this remainder, as surveyed, charted, described, and named by Vancouver himself, is the continued passage seaward between Pearse, Wales, Sitklan, and Kannaghunut Islands on the east and south, and the continental shore, Fillmore and Tongass Islands on the west and north.

The United States contend that Vancouver's Portland Canal, commencing at the head, turns

The United States' Contention.

along the branch between Pearse Island and the peninsula, passes Ramsden Point, in Observatory Inlet, and reaches the ocean by the channel between Pearse and Wales Islands on the west, and the easterly continental shore, entering the ocean between Point Wales on the west and Point Maskelyne on the east. This contention involves the question, "What was Vancouver's Observatory Inlet?" For if, as Great Britain contends, that inlet comprised the channel just mentioned, then it can hardly be part of Portland Canal.

Now, it is common ground that the easterly channel inland from Point Ramsden to its head is comprised in Observatory Inlet.

But Great Britain contends, while the United States deny, that the continuation of this channel, from Point Ramsden to the ocean between Point Maskelyne and Point Wales, is part of Observatory Inlet, as surveyed, charted, described, and named by Vancouver himself, at the same time at which he dealt with Portland Channel.

It will thus be important to ascertain whether Observatory Inlet extended from the ocean to its head, or was only an inlet of an inlet; beginning at Point Ramsden at the head of another inlet, either unnamed or being part of Portland Canal.

In this view, and also because the order of Vancouver's explorations and nomenclature naturally lends itself to the treatment, it will be found most convenient to begin, where Vancouver began, with the approach to Observatory Inlet, and to sketch his progress and work as shown in his charts and book, of which the relevant passages are to be found in the Appendix.

Vancouver's Survey.
Observatory Inlet.

Vancouver's object was to find and trace the continental shore, a task rendered difficult by the multitude of large and mountainous islands off the main coast, and by the long and narrow indentations or fiords cutting into that coast. He was often disappointed, finding what he thought mainland to be island and what he thought island to be mainland.

App. I, p. 189.

On the 21st July, 1798, Vancouver took his ships through Brown's Passage eastward, naming the Passage and Dundas Island as he passed, and reaching the entrance of an arm, up which he expected from the report of Mr. Brown to find an extensive inland navigation. To the south-east point of entrance of this arm (which is according to the British contention

Observatory Inlet) he gave as he passed it the name of Point Maskelyne.

He proceeded up the arm, exploring the indentations, and passing on the 22nd July a channel or branch to the west, extending north-north-westerly, so large that he doubted whether it might not be the main channel. This was the branch between Pearse Island and the Peninsula, off Ramsden Point, which he, as will appear, explored later. But at that time he decided to continue his pursuit of the north-north-east arm in which he was, and he eventually gained Salmon Cove far up the inlet. There he established an Observatory, and left the ships in charge of his officers, with instructions to take a series of observations. App. I, p. 140.

He himself set out up the inlet in boats, and completed the exploration to the head, without finding the supposed extensive inland navigation, and returned disappointed to the ships at Salmon Cove. Ib., p. 142.

He now believed that the continental shore extended far up the branch already mentioned between Pearse Island and the Peninsula; and accordingly proceeded to explore up that branch. On the 27th July he turned the easterly point of the entrance, which he then named Point Ramsden. Passing through the branch, he turned the other point of the Peninsula, and, proceeding inland, explored to its head the long and narrow water which is on both sides agreed to be embraced in Vancouver's Portland Canal. Ib., p. 143.

Vancouver's Survey.
Portland Canal.

Once more disappointed, he retraced his course as far as the branch between Pearse Island and the Peninsula. He did not re-enter that branch, but continued down the western channel along the western or continental shore, leaving Pearse and Wales Islands to the east and south.

On the 1st August, "in order to keep the continental shore on board," he quitted the main channel, there about a mile wide, "and whose shores appeared to be most broken, as if admitting several passages to the sea," for a narrow channel by which he passed round the greater part of an island (*Fillmore Island*), so regaining the main channel at its other end. Ib., p. 144.

On the 2nd August he observed "the south-eastern side of the canal to be much broken, through which was a passage leading S.S.E. towards the ocean" (*Tongass Passage*). Ibid.

In the hope of gaining a more northerly and westerly communication with the sea, he did not

App. I, p. 144.

take this passage, and soon found that the channel he was then pursuing also communicated with the ocean, making the land to the southward one or more islands (*Sitklan* and *Kannaghunut Islands*). He found that from the north-west point of this land, situate in latitude $54^{\circ} 45\frac{1}{2}'$, longitude $229^{\circ} 28'$ (this, it may be remarked, was on *Kannaghunut Island*, and indicates the entrance of the channel), the Pacific was evidently visible. He had thus been still pursuing the westerly channel, keeping *Sitklan* and *Kannaghunut Islands* to the south, and *Tongass Island* to the north.

Ibid.

This ended the exploration; and, on the following day, the 3rd August, he turned northward, and, after exploring *Nakat Inlet*, turned westward, reaching a point on the continental coast which he then named *Cape Fox*, and took shelter for the night in a cove close by. His journey had thus comprised the ascent of the canal from the point at which he entered it by the branch to its head, and its descent past that point by the westerly and northerly channel, to the ocean between *Tongass* and *Kannaghunut Islands*, in latitude $54^{\circ} 45\frac{1}{2}'$, longitude $229^{\circ} 28'$. This examination occupied from the 27th July to the 2nd August.

Vancouver then proceeded to explore *Revilla Gigedo* and other neighbouring islands.

On the 14th August, on his return to the ships, he passed across the south-east entrance of the canal of *Revilla Gigedo*, taking shelter for the night in the same cove near *Cape Fox*. And his book proceeds to say: --

Ib., p. 145.

"In the forenoon (*that is of the next day, 15th August*) we reached that arm of the sea whose examination had occupied our time from the 27th of the preceding to the 2nd of this month. The distance from its entrance to its source is about 70 miles, which, in honour of the noble family of *Bentinck*, I named *Portland's Canal*."

Naming Portland's Canal.

Now the distance as measured by Vancouver's chart from the ocean to the head is about 72 miles, and this naturally accounts for his figure; but the true distance, as modern charts show, is 82 miles. Thus, Vancouver was 10 miles short. This is accounted for by the fact that on his chart the head of the canal is erroneously placed in latitude $55^{\circ} 45'$, while the true latitude is $55^{\circ} 55'$, a difference of ten minutes, or 10 miles. The probable explanation is that his observation for latitude near the head of the canal taken at noon on the 29th July was erroneous.

Thus the whole canal from the sea to the head, keeping the course already described, is shown to be Vancouver's Portland Canal, identified and named by him on the 15th August; and the British contention is clearly established.

From the point last described, Vancouver, half starved, made for his ships in Salmon Cove; where, in view of the good results attained in astronomical and nautical observations, he named the water Observatory Inlet.

On the 17th August he set out in the ships on his return to the ocean by the same route by which they had entered. As his book describes this return, they "did not reach the entrance of Observatory Inlet until two o'clock in the morning of Tuesday, the 20th, a distance of not more than 13 leagues from Salmon Cove." The distance, according to a modern chart, from Salmon Cove to the entrance between Point Maskelyne and Point Wales, is about 40 miles. The words quoted, without more, show to demonstration that the entrance of Vancouver's Observatory Inlet was there, at the ocean.

An additional and final demonstration of this fact is given by the immediately following passage, "The west point of Observatory Inlet I distinguished by calling it Point Wales."

It thus appears that when entering the arm which has been described, Vancouver named its easterly point of entrance Point Maskelyne; that when setting out from Salmon Cove on his return he named Observatory Inlet; that he closely estimated the distance from Salmon Cove to the ocean entrance of that same Observatory Inlet at 13 leagues; and that as he passed what he calls "the west point of Observatory Inlet" he named it, as such, "Point Wales," which is shown just opposite Point Maskelyne.

The general result then is a conclusive demonstration that Vancouver's Observatory Inlet was the Channel extending from Point Maskelyne and Point Wales at the ocean, past Salmon Cove, to the head; and that his Portland Canal was the channel between Tongass and Kannaghunut Islands at the ocean, past Sitklan, Wales, and Pearse Islands on the south and east to the head; and that this latter is "la passe dite Portland Canal" of the Treaty.

The correctness of these views of Vancouver's action is, indeed, acknowledged in the Report of Mr. Dall, a United States' Officer, presented by

Return to and Departure from Observatory Inlet.

Naming Observatory Inlet.

App. I, p. 146.

Ib., p. 146.

Identification of Observatory Inlet.

Ib., p. 146

General Result.

Confirmation of Result.

50th Congress,
2nd Sess., Sen. Ex.
Doc. No. 146, p. 20.

the President to Congress, and printed amongst its documents. Mr. Dall concludes his résumé of Vancouver's account by saying that "if the treaty is to be tried by Vancouver's text, it will result in giving to Great Britain the above-mentioned islands (meaning Wales and Pearse Islands), and some other small ones" (doubtless referring to Sitklan and Kannaghunut Islands). The only opposing argument he makes is that there is "a certain discrepancy between his charts and his text."

And the alleged discrepancy is that on two of his charts the places alongside the waters at which are printed the names "Portland Canal" and "Observatory Inlet" do not (though it was physically possible that they should) extend southward as far as Pearse Island, and are thus, as he suggests, attached to the two upper parts alone. He admits that on a third chart the names do extend past the head of Pearse Island, but he says the larger charts would produce the stronger impression.

Other Facts and Action before the Treaty.

It is thus that Vancouver's text is to be contradicted and overborne! The printed names, of which the location is criticized, do not extend to either end of the channel alongside which they are placed. They are, notwithstanding, to reach to one end, but not to the other. They were probably so placed because those parts of the map afforded clearer spaces for printing. But it is needless to continue; the statement of his proposition is its sufficient refutation.

It remains to deal under this head with the other relevant facts and action preceding the conclusion of the Treaty, of which there are but few. There are, however, some other maps which appear to have been used by one or both of the negotiators, as to which it is convenient to point out here that the maps of Arrowsmith and Faden both show the name "Portland Canal" extending beyond the head of Pearse Island, and that the Russian charts of 1802 and 1826 show the latitude of the mouth of Portland Canal as $54^{\circ} 45\frac{1}{2}'$.

The only preliminary action, if such it can be called, consists of the references during the negotiations to Portland Canal and Observatory Inlet. As to these, the various proposals and counter-proposals affecting this branch are summarized in the answer on the third question.

It is submitted that these negotiations contain

nothing which can adversely affect the conclusions already drawn.

There are, however, at any rate two papers so clearly confirmatory of those conclusions as to justify special notice here.

The first is Baron Tuyll's suggestion to Count Nesselrode, so early as the 21st October, 1822, in which he says :—

“Mais dans la supposition que l'on ne pût réussir à App. I, p. 33
étendre les frontières de la Russie beaucoup plus vers le sud, il serait, ce semble, indispensable de les voir au moins fixées au 55° degré de latitude nord, ou, mieux encore, à la pointe méridionale de l'Archipel du Prince de Galles et l'Observatory Inlet, situés à peu près sous ce parallèle. Tout voisinage plus rapproché des établissements Anglais ne pourrait manquer d'être préjudiciable à celui de Novo-Archangelsk, qui se trouve sous les 57° 3'.”

This shows that Russia knew that Observatory Inlet entered the ocean at a point substantially as far south as the southernmost point of Prince of Wales Island, and thus that she read Vancouver's book and charts in accordance with the present British contention.

Russia, however, did not at any time propose Observatory Inlet.

And it cannot be supposed that when, later on, after tedious negotiations, she proposed Portland Channel, she meant the entrance of Observatory Inlet.

The second notable document is Sir Charles Bagot's proposal to Russia of February–March, 1824, made in amendment of the Russian proposal of that period to adopt Portland Channel.

In this he says :—

“Comme il a été convenu de prendre pour base de Ib., p. 70.
négociation les convenances mutuelles des deux pays, il est à remarquer, en réponse à la proposition faite par les Plénipotentiaires Russes, qu'une ligne de démarcation tracée de l'extrémité méridionale de l'île du Prince de Galles jusqu'à l'embouchure du Canal de Portland, de là par le milieu de ce canal jusqu'à ce qu'elle touche la terre ferme, de là jusqu'aux montagnes qui bordent la côte, et de là le long de ces montagnes jusqu'à la longitude du 139° degré, &c., ôteroit à Sa Majesté Britannique la souveraineté de toutes ces anses et de ces petites baies qui se trouvent entre les latitudes 56° et 54° 45'.”

This shows that the British understanding, communicated to and not questioned by Russia,

was that Portland Channel entered the ocean in $54^{\circ} 45'$, which is a very close approximation to Vancouver's observation, already given, of $54^{\circ} 45\frac{1}{2}'$ for Kannaghunut Island, and is identical with the position given on the Russian charts of 1802 and 1826 to the entrance of Portland Canal. It does not fit Point Wales, which was plainly in a lower latitude, and is now ascertained to be in $54^{\circ} 42' 15''$. Sir Charles Bagot's statement, therefore, shows the view taken at the time as to the entrance of Portland Canal, coinciding with the British Case now presented.

Thus, that affirmatively appears which, even in the absence of any such evidence, would yet be the clear and indubitable presumption, namely, that there was not, on the one hand or the other, any mistake as to either Portland Channel or Observatory Inlet, and that both sides correctly understood the entrances and courses of those channels to be according to the facts already demonstrated, and dealt with each other on that footing.

Navigability.

It is possible that the comparative facility of navigation of Observatory Inlet over Portland Channel may be urged as an argument for the adoption of the former as the Portland Channel mentioned in the Treaty. Any such argument must be dissipated by the precise and unmistakable description of Portland Channel already given; to overbear which, on any such ground, would be to refuse all respect for, or adherence to, the terms of the Treaty.

To this view may be added these observations. The 55th parallel was the limit of the Russian claim; any suggested further extension southward to about $54^{\circ} 40'$ being but local, for the express purpose of giving Russia the whole of Prince of Wales Island, which appeared to extend to about that parallel.

Portland Channel, as described, was the first natural continental boundary beginning below 55° , and was presumably proposed on this ground. Portland Channel was proposed, not on any claim or contention for inland navigation, but solely as a convenient natural boundary to the suggested continental possessions of Russia. These possessions were claimed only as essential to the beneficial enjoyment of the islands and their trade.

The appellation, given in the Treaty to the canal, of "passe," is in itself indicative of a narrow channel, and fits the true Portland

Canal far better than it does the broad waters suggested in substitution.

If convenience is to be considered, there are infinitely stronger arguments against the admission of the United States as successors in title of Russia to the navigation of Observatory Inlet and the sovereignty of Wales and Pearse Islands. For such admission would give domination of the continental coast opposite, and the important point of Port Simpson, to the great prejudice of Great Britain. Indeed, this is the consideration, and not that of the value of Wales and Pearse Islands in themselves, which really makes the question of Portland Canal of substantial interest to either nation. Great Britain is naturally desirous of safety against attack, which has, as she conceives, been secured by the true construction of the Treaty. These islands are valuable to her for defence; they can be valuable to any other Power only for attack.

But, in truth, neither ground can be justly urged as affecting the interpretation of the Treaty.

Reference must now be made to matters subsequent to the Treaty which may, under the terms of the Convention, be assumed to affect its interpretation.

It is submitted that there is, in regard to this question at any rate, no ground for changing, by any subsequent matter which can be set up, the plain and clear conclusion to be reached on the contemporaneous evidence as to the meaning of "la passe dite Portland Channel."

And any suggestions to a contrary effect will be just touched on here, in the same spirit and under the same reserves as apply to some suggestions so touched on in dealing with the first question.

It is submitted that (whatever weight might be given to matters of the nature referred to, were the question one of the interpretation to be assigned to a document fairly susceptible of more than one meaning, on the ground that both Parties had by their acts clearly given to it the interpretation claimed) such matters should not be used here to overbear a meaning so conclusively established.

There seems, indeed, to be little or nothing of any adverse significance in early years.

Action subsequent to the Treaty.

The practice of some cartographers, prior to the Treaty, was to treat as the more important water Observatory Inlet, which had been the scene of the astronomical observations by which the survey of the region generally was corrected; and sometimes, accordingly, it alone is named, Portland Channel being delineated without name.

But in the years following the Convention, Portland Channel, presumably by reason of the importance it had acquired through that transaction, appears named, while Observatory Inlet is sometimes left without a name.

"The History of Oregon and California, &c.," 2nd Edition, Boston, 1845.

As to the lines laid down by cartographers, reference is made to the work of Mr. Greenhow, Translator and Librarian of the Department of State of the United States, and a man of high repute. In the map in his history of Oregon and other regions, published in Britain in 1844, and in the United States in 1845, he shows the water boundary running to the north of the islands, in accordance with the British contention.

And it is believed that no map has been found showing any contrary indication till a comparatively late date.

Indeed, upon the cession by Russia to the United States, they dispatched troops to occupy the territory, and stations were established at various points, one of which was at Tongass, just north of the Portland Channel. The fair presumption is that this was because that was the limit; for had Wales Island been the limit, surely an occupying force would have been stationed there, or on Pearse Island, instead of at Tongass.

App. II. Map
No. 25.

It would seem that the first departure from Vancouver's nomenclature was in 1853, when the Hydrographic Department of the British Admiralty, on the occasion of a fresh survey of Queen Charlotte Island and adjacent coasts, applied to that part of Observatory Inlet, which extends from Pearse Island to the sea, the name of Portland Inlet.

No authority has been traced for bestowing this name; but it seems not to have been unusual for those engaged in surveys or in cartography from time to time to distinguish named regions more minutely or to give names to unnamed points. And it seems to be a common practice when, for example, an island point has been

named, for later surveyors or cartographers to assign the name of the point to the island also. So it happened that Wales Island was, in 1853, named by the British Admiralty. App. II. Map
No. 25. Pearse Island was first named in 1868, and then by the British Admiralty Surveyor. The name Pearse Canal was first applied to the lower part of Portland Channel in a United States' chart so late as 1885. Whatever complication or confusion has arisen is perhaps traceable to the application of the name Portland Inlet as described.

There seems to have been a system of communication of their charts between the Admiralty Departments of the different Powers, under which the later charts of one country were used in the preparation of succeeding charts in the other. And such, of course, was the habit of private cartographers. Thus, there would be a natural tendency to the reproduction of a fresh name or line on all later charts.

In the absence of any question raised as to the boundary which would attract attention to the matter, such matters are, it is submitted, of no importance. And, at any rate, they do not destroy, or even weaken, clear existent rights.

There is one remaining transaction of late date which is more fully dealt with hereafter, to which a short allusion should now be made.

After the question of the boundary had become urgent, and a joint survey under the Commission of 1892 had proceeded, the United States, in 1896, caused small storehouses of about 15 feet by 20 feet dimensions, never used or occupied, to be built, one on Wales Island, a second on Pearse Island, a third on Halibut Bay higher up on Portland Canal, and a fourth on Salmon River, near the head of the canal. These erections were indicated in a United States' coast survey chart, whereupon in 1902 Great Britain called attention to the fact, and asked explanations. In reply, it was stated by the Secretary of State that on examination of the charts of the region he found no indication of storehouses at the points named, and that he was not aware that Great Britain had advanced any claim to the region before the signature of the Protocol of 30th May, 1898.

United States' Storehouses on Wales
and Pearse Islands.

On reference being given to the number of the chart, the Secretary of State explained that the omission of the storehouses on the later issues was caused by an oversight of the draughts-

App. I, p. 300.

Ib., p. 294.

Ibid.

Ib., p. 295.

man, and that they would appear on the later charts to be issued.

It is submitted that no transaction of this nature, accomplished at that juncture under those circumstances and with such obvious intent, could, even had it passed unnoticed, avail to strengthen the claim of the United States or to weaken that of Great Britain.

Water boundaries alternative to Portland
Canal.

Allusion was made at the commencement of the discussion of this question to alternative water routes.

As then stated, the British view is that the language of the Treaty, applied to the relevant extrinsic evidence, so inevitably fixes Vancouver's Portland Canal as being "*la passe dite Portland Channel*," that it is hopeless to contend for any other route—hopeless, for example, to propose, as do the United States, the substitution of the lower part of Observatory Inlet for the lower part of Portland Canal.

This view is maintained by Britain, in spite of the fact that there are, with reference to the other parts of the description of the line—both of that part which runs from Prince of Wales Island into and up the canal, and that part which strikes the 56th parallel, and thence follows the crest of the mountains situated parallel to the coast—some difficulties as to its adoption. These difficulties will crop up again in the discussion of the subsequent questions. They may, for the present purpose, be adequately summarized as follows:—

First; the line from Prince of Wales Island to the channel is, under the Treaty, to start from a point, from which it is to ascend to the north, along the passage called Portland Canal.

Reference is made to the map for better comprehension of the statement.

It is obvious that instead of ascending to the north from Prince of Wales Island, the course, if the contention of the United States were adopted, would be due east for 74 miles; while, if the British view be taken, it will be a course north 85° east for 66 miles, there being in the latter case but little northing, while in the former there is absolutely none, for these considerable distances.

Though the British contention does give some northing, and so far inflicts less violence on the language than that of the United States, yet neither of these results can be said to accord

with the more obvious import of the description, which points to a northward line from Prince of Wales Island.

Next, the line is to ascend north along the channel up to the point of the mainland where it reaches the 56th parallel. There is a moot point not now to be debated: What is "it"? Is it the line, the channel, or the land?

From the 56th parallel the line is to follow the crest of the mountains parallel to the coast, being by subsequent provisions those lying within not more than 30 miles of the Ocean.

The natural construction of the language seems to contemplate a point on the channel where the parallel and the coast-mountains meet.

But Portland Canal does not fulfil these conditions. According to Vancouver's work, the only source of knowledge then available, it ends about 15 miles, and, according to recent surveys, about 5 miles south of the parallel. And the required mountains do not approach any part of the channel; nor do they coincide with the 56th parallel short of a point near the coast on a course north 85° west from the head of the channel.

It thus becomes necessary, in order to reach the separated points assumed to be coincident, either (1) to run the line from the head of the channel along the course just mentioned, which is the shortest way of reaching the point of coincidence of the coast-mountains and the parallel, or (2) to run it north to the parallel and thence along the parallel to the same point, or (3) to run it in the general direction of the course of the canal to the parallel and then along the parallel as before.

The general result is that the description does not fit the facts, and it is necessary to project lines not specifically designated in the Treaty, and to take courses easterly, northerly, and westerly along three sides of a great square in order to bring Portland Canal into the line of demarcation.

These are results so extraordinary that they can be accepted only on the hypothesis that, under the specific words of the Treaty, it is imperative to find and follow Vancouver's Portland Canal.

And be it remembered that to get into that canal by Observatory Inlet would only make bad worse.

But if this hypothesis were discarded, it is clear that there are other channels which so well meet the difficulties, and, in all but name, fit the description, that—only looking over the ground and applying to it the words of the Treaty—there could be no hesitation in concluding that one or other of these, and not Portland Channel, is what the words import.

Taking these routes for convenience in their order of proximity to Prince of Wales Island, and of conformity to the indicated line, the first is by Clarence Straits and its continuation, Ernest Sound; through which channel a line can be drawn ascending north all the way from Prince of Wales Island, and striking (as nearly as can in the nature of things be expected when water is to meet a mountain crest) a point coincident at once with the channel, the parallel, and the mountains.

The next route is through Clarence Straits and Behm's Canal, on the west of Revilla Gigedo, past Bell Island at its head, to Burroughs Bay, on which route a line can be drawn achieving substantially the same results.

The last is past the south-easterly point of Revilla Gigedo Island, through Behm's Canal on the east of that island, past Bell Island to Burroughs Bay, on which route again, though less directly than by the others, a line can be drawn with like results.

It cannot be denied that reference to the course of the negotiations raises difficulties in the way of the adoption of any of these lines.

But it is only by applying the course of the negotiations, and drawing from them both negative conclusions as to these lines and affirmative conclusions as to Portland Canal, and by holding that the Treaty words "dite Portland Channel" absolutely control, that a case can be made for that route against other suggested lines.

Great Britain then, agreeing to Portland Canal, claims that it is the Portland Canal of Vancouver, and is not to be at all departed from.

But she claims also that, if departed from, it is not the entrance of Observatory Inlet (which would aggravate some and diminish none of the difficulties), but one of the other routes above indicated that should be preferred, as most nearly answering the language of the Treaty.

THIRD QUESTION.

The third question to be answered by the Tribunal is—

Third Question.

“WHAT COURSE SHOULD THE LINE TAKE FROM THE POINT OF COMMENCEMENT TO THE ENTRANCE TO PORTLAND CHANNEL ?” Case, p. 3.

The words of the Treaty are—

“A partir du point le plus méridional de l'île dite *Prince of Wales*, lequel point se trouve sous la parallèle du 54° 40' de latitude nord, et entre la 131° et le 133° degré de longitude ouest (méridien de Greenwich), la dite ligne remontera au nord le long de la passe dite *Portland Channel*,” &c. App., p. 38.

The question rightly assumes that the course of the line must be from the point of commencement to the entrance of Portland Channel.

The British view as to these two points has been already stated, and, it is submitted, established; and the contention of the United States, so far as at present appears, has also been indicated and briefly challenged by anticipation and under reserve.

British View.

Whatever the two points may be, it is submitted that the general principle and universal rule, where a line is to be drawn from point to point without further definition, should govern, namely, that the most direct line between the points should be taken.

Accordingly, the British contention is that, subject to the question as to Cape Chacon to be presently treated, the course should be on the shortest line from the southernmost point of Cape Muzon to the centre of the channel between Tongass and Kannaghunut Islands.

Such a line would be an arc of a great circle and would follow a course north 85° east, thus running a little northerly, and so, to some extent, conforming to the direction to the north indicated in the Treaty.

But such a line would cut off a small part of Cape Chacon; while, under the IVth Article of the Treaty, it was agreed, “par rapport à la ligne de démarcation . . . que l'île dite *Prince of Wales* appartiendra toute entière à la Russie.”

To accomplish this result, the line thus described must receive some modification.

If its general course is to remain, then, at the point where it reaches the shore of Cape Chacon,

it must be deflected round that cape till it strikes the point on its other shore, where, were it continued across the cape, it would have left the land; and it must thence proceed on the original course.

If its general course is to be so far modified as to exclude Cape Chacon, then that course should be on the arc of a great circle from the point of commencement to the southernmost point of Cape Chacon; and thence, again, on the arc of a great circle, to the entrance of Portland Channel, as above described.

The latter may be the simpler, but there is no substantial difference in the result.

United States' Contention.

Touching briefly, in the sense and with the reserves already indicated, on the understood contention of the United States, reference has been already made, in dealing with the First Question, to the notion that the parallel of $54^{\circ} 40'$ is the point of commencement.

For the moment treating that notion as exploded, there remains no visible connection whatever between the line and the parallel.

It is to begin south of the parallel, and is to ascend north along Portland Channel, the very entrance of which is itself further north than the point of commencement.

How, then, or why is it to be curved so as to attain the parallel, in order that it may thence proceed due east along a parallel which did not even govern the point of departure, and has nothing at all to do with the course?

This would be to violate, not to fulfil, the Treaty.

But even if the point of commencement be on the parallel, this affords not the smallest ground for the contention that the course is to be along it.

The point is one of commencement of a line which is to depart thence, and the route by which it is to travel must be traced by its description, which does not take it along the parallel, but gives it a northward direction.

It may also be remarked that the frame of the Treaty is quite opposed to the introduction, by interpretation, of parallels of latitude or meridians.

When these are required, as in the case of the meridian of 141° W. longitude, the intersection with the parallel of 56° N. latitude, and the point of termination at the meridian of 141° W.

longitude, the intention is stated clearly and decisively.

It is submitted that nothing in the course of the negotiations damages, but everything confirms, the British view as to the effect of the Treaty on this point. Preliminary Action bearing on the Question.

A résumé of the various proposals may be useful as showing the process by, and the basis on which, the Parties in the end agreed :—

1. Great Britain, in 1823, suggested the 57th parallel as a line satisfactory to her. App. I, p. 45.

2. Subsequently she suggested Cross Sound, as lying in about latitude $57\frac{1}{2}$. Ib., p. 48.

3. Thereon Russia suggested the 55th parallel. Ibid.

4. Great Britain, in February 1824, proposed a line drawn through Chatham Straits to the head of Lynn Canal. Ib., p. 66.

5. As a counter-proposal, Russia, in February (March) 1824, once more suggested the 55th parallel, adding these words :—

“ Comme le parallèle du 55° degré coupe l'île du Prince de Galles dans son extrémité méridionale, laissant en dehors deux pointes de terre, les Plénipotentiaires de Russie ont proposé que ces deux pointes fussent comprises dans les limites Russes, voulant éviter par là une division de territoire également incommode aux deux parties intéressées. Ib., p. 70.

“ Pour compléter la ligne de démarcation et la rendre aussi distincte que possible, les Plénipotentiaires de Russie ont exprimé le désir de lui faire suivre le *Portland Canal* jusqu'aux montagnes qui bordent la côte.”

6. Great Britain made an amended proposal, which stated the Russian plan as one for a boundary-line drawn from the southern extremity of Prince of Wales Island to the entrance of Portland Canal, and thence along the canal, &c., and pointed out that this line would deprive Britain of all the little bays between 56° and $54^{\circ} 45'$. Ibid.

And she offered to take as the boundary a line drawn from the west, eastward through the channel separating Prince of Wales Island and Duke of York's Island from all the more northerly islands, till the line should reach the mainland. Ib., p. 71.

7. Russia, thereon, acknowledging that the Russian Company had not fixed establishments on the 55th parallel, yet pointed out the conditions as to its trade as reasons for the Russian proposals, and proceeded as follows :—

“ Il étoit donc de la convenance mutuelle des deux Empires d'assigner de justes limites à des progrès ré- Ibid.

oiproques qui ne pouvaient qu'occasionner avec le temps les plus fâcheuses complications.

"Il étoit aussi de leur convenance mutuelle de déterminer ces limites d'après les séparations naturelles qui forment toujours les frontières les plus distinctes et les plus certaines.

"C'est par ces raisons que les Plénipotentiaires de Russie ont proposé pour limites sur la côte du continent au sud le *Portland Channel*, dont l'origine dans les terres est par le 56° degré de latitude nord, et, à l'est, la chaîne de montagnes, qui suit à une très petite distance les sinuosités de la côte

"On ne parlera point ici des deux pointes de l'île du Prince de Galles, qui sont situées au-dessous de la ligne du 55° degré de latitude nord. Ces deux pointes ne pourroient être d'aucune utilité à la Grande-Bretagne, et si les neuf-dixièmes de l'île du Prince de Galles appartiennent à la Russie, il est évidemment d'un intérêt réciproque que l'île lui appartienne tout entière."

App. I, p. 74.

8. Great Britain, objecting to concede Portland Canal, proposed a line from the end of Duke of Clarence Straits through that channel to the middle of the channel separating Prince of Wales and Duke of York's Islands from all the islands to the north, and then through that channel to the mainland.

Ib., p. 66.

9. Russia declined; and the negotiations were suspended, pending a reference to the British Government.

Ib., p. 85.

10. On the 12th July, Great Britain authorized her Plenipotentiary to consent to include the south points of Prince of Wales Island within the Russian frontiers, and to take as the line of demarcation a line drawn from the southernmost point of Prince of Wales Island from south to north, through Portland Canal, &c.

Ib., p. 87.

And the despatch enclosed a draft Convention describing the line thus: "Commencing from the two points of the island called 'Prince of Wales Island,' which form the southern extremity thereof, which points lie in the parallel of 54° 40', and between the 131st and 133rd degree of west longitude (meridian of Greenwich), the line of frontier between the British and Russian possessions shall ascend northerly along the channel called Portland Channel."

11. The Russian Ambassador made no objection to this line. And Russia later presented a counter-draft, the line proposed by which was, as to this part, as follows:—

Ib., p. 94.

"A partir des deux points qui forment l'extrémité méridionale de l'île dite du Prince de Galles, laquelle

appartiendra tout entière à la Russie, points situés sous la parallèle du 54° 40' de latitude nord, et entre les 131° et 133° de longitude ouest (méridien de Greenwich), la ligne de la frontière entre les possessions Russes et les possessions Britanniques remontera au nord par la passe dite le *Portland Channel*."

12. Owing to differences on other points, the App. I, p. 92. negotiations were again suspended.

13. Upon their renewal, no question was raised as to this branch of the subject. Great Britain proposed a draft, which thus stated the line: "Commencing from the southernmost point *Ib.*, p. 115. of the island called 'Prince of Wales Island,' which point lies in the parallel of 54° 40', and between the 131st and 133rd degree of west longitude (meridian of Greenwich), the line of frontier between the British and Russian possessions shall ascend northerly (the whole of Prince of Wales Island belonging to Russia) along the channel called 'Portland Channel.'"

14. After discussion, the Treaty was concluded, on the basis of that draft, in the words already given.

It is submitted that everything that passed during the negotiations confirms the British Case in favour of the direct line between the described points.

FOURTH QUESTION.

The fourth question to be answered by the Tribunal is—

Fourth Question.

"TO WHAT POINT ON THE 56TH PARALLEL *Case*, p. 3. IS THE LINE TO BE DRAWN FROM THE HEAD OF THE PORTLAND CHANNEL, AND WHAT COURSE SHOULD IT FOLLOW BETWEEN THESE POINTS?"

The words of the Treaty are:—

"La dite ligne remontera au nord le long de la passe *App. I*, p. 38. dite *Portland Channel* jusqu'au point de la terre ferme où elle atteint le 56° degré latitude nord; de ce dernier point la ligne de démarcation suivra la crête des montagnes situées parallèlement à la côte."

The line is to ascend to the north along the "Passe" called Portland Channel, to the point in the mainland at which "it" (referring to either

the line, the channel, or the mainland) reaches the 56th parallel of north latitude, and from that same last-mentioned point the line is to follow the crest of the mountains situated parallel to the coast.

It is submitted that the point in the 56th parallel to which the line should be drawn is the point from which it is possible to continue the line along the crest of the mountains situated parallel to the coast, and, accordingly, that the point at which the 56th parallel and the crest of the coast mountains coincide is the point in question.

The question as to what is meant by "elle" seems to present more room for subtle disputation than for profitable argument.

As suggested in the prior reference, the description rather assumes a coincidence of the channel, the parallel, and the mountains, in which case it would be of no consequence whether "elle" refers to the line, the land, or the channel. But in fact there is no such coincidence. It is the bridging of the gap which makes the difficulty.

Whether "elle" denotes *la passe*, *la ligne*, or *la terre ferme*, it is submitted that the point to be attained is the point on the 56th parallel, whence the line can, as is directed, follow the crest of the coast mountains.

Then, recognizing that the gap to be filled is that between the head of the canal and the point of coincidence of the parallel with the coast mountains, and, adopting the general principle as to lines to be drawn from point to point (a principle never more solidly based on reason than when the aim is to bridge a gap not obviously contemplated at all), it is submitted that the line should be drawn direct on the arc of a great circle to that point of coincidence which has already been described.

Two other modes of drawing the line so as ultimately to reach that point are suggested. One is to draw it due north from the head of the canal to the parallel, and thence along the parallel to the point of coincidence with the coast mountains.

This may be argued to be the shortest way of reaching the parallel; and so it is; but taking the whole description together, it is the parallel at the point of coincidence that is to be attained; and to that point this is not the shortest route; it takes two sides of a triangle.

The other is to extend the line on the general direction of the canal till it reaches the parallel, thence continuing as before. To this plan similar observations apply.

Each of these alternative plans would transfer to the United States the triangle enclosed between the line first proposed and the others; but this, though of consequence, is not the most important subject of contention; which is rather the point to be attained on the parallel than the route by which that point is to be reached; and, of course, any of these routes would reach the point for which Great Britain contends.

As to the point on the ground which answers the suggested definition, that subject falls within the general question of the *lisière* boundary, of which the point is the commencement, and is therefore reserved for the general discussion under the subsequent questions.

It is now proper to add a brief reference (subject to the limitations already indicated) to the result in case it should be found that the coast mountains are, at their intersection with the 56° north latitude, more than 10 leagues from the Ocean, in which case the boundary-line is to be formed by a line parallel to the windings of the coast, from which it is never to be more (though it may be less) distant than 10 leagues.

It is submitted that the effect of this alternative provision, if it be held that the facts on the ground bring it into operation, would be to substitute, for the already described point of coincidence on the parallel, that point on the parallel which answers the language of the provision, and which must accordingly be not more (though it may be less) than 10 leagues from the coast. It is submitted that to that point (to be ascertained according to the rules of decision which may be laid down in answer to the general questions to be later discussed) the observations made would apply, and that the line should be drawn to it on the principle stated.

It is submitted that there is nothing in the negotiations which impairs the force of the arguments presented as to the effect of the Treaty on this point.

And as to subsequent action there is nothing suggested, apart from the alleged effect of the maps tracing the boundary-line, indicating the 10-league limit and not the coast mountains as the boundary. The discussion of this point,

already touched on in the Case, falls within the general question, and, therefore, is not here opened.

FIFTH QUESTION.

Fifth Question.

The fifth question is as follows:—

Case, p. 8.

“IN EXTENDING THE LINE OF DEMARCATION NORTHWARD FROM SAID POINT ON THE PARALLEL OF THE 56TH DEGREE OF NORTH LATITUDE, FOLLOWING THE CREST OF THE MOUNTAINS SITUATED PARALLEL TO THE COAST UNTIL ITS INTERSECTION WITH THE 141ST DEGREE OF LONGITUDE WEST OF GREENWICH, SUBJECT TO THE CONDITION THAT IF SUCH LINE SHOULD ANYWHERE EXCEED THE DISTANCE OF 10 MARINE LEAGUES FROM THE OCEAN THEN THE BOUNDARY BETWEEN THE BRITISH AND THE RUSSIAN TERRITORY SHOULD BE FORMED BY A LINE PARALLEL TO THE SINUOSITIES OF THE COAST AND DISTANT THEREFROM NOT MORE THAN 10 MARINE LEAGUES, WAS IT THE INTENTION AND MEANING OF SAID CONVENTION OF 1825 THAT THERE SHOULD REMAIN IN THE EXCLUSIVE POSSESSION OF RUSSIA A CONTINUOUS FRINGE, OR STRIP, OF COAST ON THE MAINLAND, NOT EXCEEDING 10 MARINE LEAGUES IN WIDTH, SEPARATING THE BRITISH POSSESSIONS FROM THE BAYS, PORTS, INLETS, HAVENS, AND WATERS OF THE OCEAN, AND EXTENDING FROM THE SAID POINT ON THE 56TH DEGREE OF LATITUDE NORTH TO A POINT WHERE SUCH LINE OF DEMARCATION SHOULD INTERSECT THE 141ST DEGREE OF LONGITUDE WEST OF THE MERIDIAN OF GREENWICH?”

Great Britain contends that the answer to this question should be in the negative.

The material phrases in the Treaty are as follows:—

App. I, p. 38.

“La ligne de démarcation suivra la crête des montagnes situées parallèlement à la côte (Article III).

“Que partout où la crête des montagnes qui s'étendent dans une direction parallèle à la côte . . . se trouverait à la distance de plus de 10 lieues marines de l'Océan, la limite entre les possessions Britanniques et la lisière de côte . . . sera formée par une ligne parallèle aux sinuosités de la côte et qui ne pourra jamais en être éloignée que de 10 lieues marines (Article IV).”

It is clear that "côte" and "Océan" refer to the same thing. If the mountains are more than 10 marine leagues from the "Océan," the line must be drawn nearer the "côte." If the mountains are within 10 marine leagues of the "Océan," the 10 marine leagues from the "côte" have not to be measured.

Upon the meaning of the two words "côte" and "Océan" in these Articles the answer to this question depends.

It is submitted upon the language of the Russian negotiators that the words "la côte" and "l'Océan," as used by them, referred to coast and water outside the narrow inlets. With respect to Portland Canal, it is demonstrable that they did not consider this either "côte" or "océan."

In the Russian reply to Sir Charles Bagot's amended proposal, Portland Canal is made the boundary "sur la côte du continent au sud," obviously treating it as running from the coast inland, because in the same sentence it is said that its origin "dans les terres est par le 56° degré." App. I p. 71.

In the same document the coast left to Great Britain is described as starting from the "embouchure" of Portland Canal. If Portland Canal was coast, the British coast should have been described as commencing at its head.

In Count Nesselrode's despatch of the 17th April, 1824, he refers to the entrance to Portland Canal as its "embouchure dans l'océan," and to the head of it as its "origine dans les terres." Ib., p 76.

In Count Nesselrode's draft Treaty submitted to Sir Charles Bagot the head of Portland Channel is spoken of as "dans l'intérieur de la terre ferme." Ib., p 94.

The same conclusion is deducible from a consideration of what must have been present to the minds of the negotiators.

It is to be observed that this Treaty contemplates a shore-line such as admits of another line being drawn parallel to its sinuosities at a distance of 10 marine leagues. The negotiators, though they were consciously ignorant of the true position of the mountains, had before them in Vancouver's Map a representation of the continental shore-line which they knew had been explored by him. It was as patent to them as it is to us to-day that it would be impossible to trace a line following at 10

marine leagues the convolutions of the line forming the edge of salt water. On the other hand, it was as patent to them as it is to us to-day that to draw a line following the waving character of the general coast, neglecting the deep and narrow inlets, would be a perfectly feasible and business-like arrangement.

The British contention is that the possible, and not the impossible, was contemplated; and that whether any particular recess or projection is to be regarded as varying the contour of the "coast" within the meaning of this Treaty (*i.e.*, whether or not its shore is "*côte*" within Article III, and the convolutions of that shore "*sinuosités de la côte*" within Article IV) is a question of fact depending upon its shape and size, and the other circumstances of its relation to the general contour. One test would, in principle, be analogous to that employed when the question is whether inland waters are territorial. Another test would be furnished by the consideration that the line contemplated was one capable of having another drawn parallel to it at a distance of 10 marine leagues; and convolutions inconsistent with this character could not be followed in detail.

The line of coast, ascertained on the system above contended for, supplies the datum line with reference to which the boundary (following the mountains or the 10-marine-league line, as the case may be) is to be applied. If and where the inlets penetrate further than the boundary so ascertained, Great Britain contends that the Treaty meant they were to be in British territory.

In this connection attention is drawn to the 10-marine-league line drawn as contended for by the United States. It is apparent that it does not, and cannot, follow the sinuosités of the "*côte*" as that word is interpreted by the United States themselves. It is drawn parallel to an imaginary line running primarily through the points at the head of the inlets. This must in any case be wrong. Yet there is no feasible alternative but that presented by the British view.

The view above now contended for by the United States has not always been put forward by the officers of that Government. In 1893 Dr. T. C. Mendenhall, in issuing instructions to the surveyors under his direction for the making

of the survey under the Convention of 1892, directed Mr. Tittmann, charged with the duty of survey of the Stikine River, to continue his survey to a point on that river, distant "not less than thirty nautical miles from the coast of the mainland in a direction at right angles to its general trend." Mr. Tittmann was also informed that, should a range of mountains be found to exist, it was of the first importance that its distance from the coast and its general trend should be determined unless such distance should considerably exceed the specified 30 nautical miles. Mr. J. E. McGrath is directed in the survey of Taku Inlet and River to continue his survey to a point "on the inlet or river distant not less than 30 nautical miles from the coast of the mainland in a direction at right angles to its general trend." His instructions as to the mountains are in the same words as those given to Mr. Tittmann.

App. I, p. 274

Ib., p. 276.

It is evident that Dr. Mendenhall did not consider the shore line of an inlet as being part of the "coast."

As will be seen from the maps of the United States' Commission, the survey of the Stikine River was carried to a point of the river from which a distance of 30 marine miles, measured towards the coast, at right angles to its general direction, indicates the "line of general trend" to pass at the entrance of Le Conte Bay. The point taken on the Stikine is less than 30 miles from the head of that bay.

App. III. Portfolio,
United States'
Commission Map.

Again, the point on Taku River is 30 miles from Jaw Point, which is within Taku Inlet and several miles south of its head. Part of the inlet is, therefore, less than 30 miles from the point taken.

It is to be observed that Dr. Mendenhall and his able assistants were engaged under the Convention of 1892 in ascertaining "the facts and data necessary to the permanent delimitation of the boundary-line in accordance with the spirit and intent of the existing Treaties." Copies of Articles III and IV of the Treaty of 1825 were embodied in the instructions above cited. Yet the principle followed by them (which is the same as that applied on the Stikine River by Mr. Hunter in 1877) is inconsistent with the view *since* contended for by the United States. For if the line is properly drawn parallel to the general trend of the coast when inlets breaking that general trend

terminate short of the line so drawn, it must also be properly so drawn when the inlets are long enough to be cut by it. The effect of the occurrence of the mouth of an inlet upon the general trend of the coast cannot depend upon its interior length.

The truth is that the only difficulty is that caused by reading into the Treaty a controlling principle that British territory shall nowhere touch salt water, and by rejecting every application of the Treaty which does not produce a result in conformity with that assumption. It is submitted that no vestige of any such principle is to be found in the Treaty. The question whether British territory touches salt water was left by the Treaty to depend upon the application of the boundary thereafter to be ascertained with reference to the general line of the coast as a datum. Any assumption as to how the provisions of the Treaty would affect particular places would, therefore, be an assumption, not as to the meaning of the Treaty, but as to the way it would operate when practically applied.

It is submitted that the reasons above given show that this is what the negotiators must have contemplated, and such conclusion is not inconsistent with any intention that can be attributed to either party.

It has been said that the Russians were negotiating to exclude Great Britain from the sea. The Russian description in the course of the negotiations of the danger they anticipated to their establishments on the islands, if they did not obtain a *lisière* of coast, does not warrant the assumption that they regarded their safety as only to be secured by Great Britain being cut off from salt water.

App. I, p. 75

In Count Nesselrode's despatch to Count Lieven of the 17th April, 1824, in which are summed up and repeated the views he had expressed during the negotiations with Sir C. Bagot, he described the situation he wished to guard against. Speaking particularly of Prince of Wales Island, he said that, according to the proposal of the English Ambassador (which offered the Clarence Strait line), Russian establishments of that island "*se trouveraient entièrement isolés, privés de tout soutien, enveloppés par les domaines de la Grande-Bretagne et à la merci des établissements Anglais de la côte.*" To avoid a state of things so described,

Ib., p. 77.

it was not necessary to cut Great Britain off from access to the sea. Count Nesselrode himself says so a little lower down in the same despatch. "Pour nous," he writes, "nous bornons nos demandes à celle d'une simple lisière du continent, et afin de lever toute objection, nous garantissons la libre navigation des fleuves." And further on: "La Russie laisse au développement progressif des établissements Anglais une vaste étendue de côte et de territoire; elle leur assure de libres débouchés." App. I, p. 77. Ib., p. 78.

A further argument in support of the British contention can be based upon Article VII of the Treaty. The liberty to frequent the inland seas, gulfs, havens, and creeks on the coast mentioned in Article III is reserved mutually by both Powers. This contemplates the possibility, at least, that some of these waters may be British.

This Article has, however, been used to furnish an argument against the British contention. It has been said that it shows that Great Britain was taking for a limited period a licence to frequent waters of this description on this coast that were *ex hypothesi* Russian. That is undoubtedly true. But the point is whether they were necessarily all of them, and in every part, Russian. This in no way follows from the licence given by the Article, which, of course, only postulates that there should be some Russian waters to which it may apply. It equally postulates that there should be some British waters to which it may apply.

SIXTH QUESTION.

The sixth question is as follows:—

Sixth Question.

"IF THE FOREGOING QUESTION SHOULD BE ANSWERED IN THE NEGATIVE, AND IN THE EVENT OF THE SUMMIT OF SUCH MOUNTAINS PROVING TO BE IN PLACES MORE THAN 10 MARINE LEAGUES FROM THE COAST, SHOULD THE WIDTH OF THE *lisière* WHICH WAS TO BELONG TO RUSSIA BE MEASURED (1) FROM THE MAINLAND COAST OF THE OCEAN, STRICTLY SO CALLED, ALONG A LINE PERPENDICULAR THERETO, OR (2) WAS IT THE INTENTION AND MEANING OF THE SAID CONVENTION THAT WHERE THE MAINLAND COAST IS

Case, p. 3.

INDENTED BY DEEP INLETS FORMING PART OF THE TERRITORIAL WATERS OF RUSSIA, THE WIDTH OF THE *lisière* WAS TO BE MEASURED (a) FROM THE LINE OF THE GENERAL DIRECTION OF THE MAINLAND COAST, OR (b) FROM THE LINE SEPARATING THE WATERS OF THE OCEAN FROM THE TERRITORIAL WATERS OF RUSSIA, OR (c) FROM THE HEADS OF THE AFORESAID INLETS ? ”

This question is expressed to arise “if the foregoing question should be answered in the negative, and in the event of the summit of the mountains proving to be in places more than 10 marine leagues from the coast.”

This is understood to refer to the event of a double condition being fulfilled, viz., if—

1. The coast-fringe is held not to be necessarily continuous on the mainland; and also
2. The summit of mountains prove to be in places more than 10 marine leagues from the coast of such (possibly discontinuous) fringe.

The answer which Great Britain contends should be given to the points raised in this question appears from what has been said in dealing with the fifth question. The width of the *lisière* should be measured along a line perpendicular to the general direction locally of the mainland coast of the ocean, that is to say, from the line of the “côte” as interpreted in the answer submitted to the last question, which line was described as the datum line.

Whether any inlet forms part of the territorial waters of Russia depends on the question how far back the inlet extends from the line of the coast of the Ocean, as above explained. If it extends further than the line of the mountains parallel to such coast, or, in the absence of mountains, further than 10 leagues from such coast, the upper part of the inlet is part of the territorial water of Great Britain. It is only in the event of its not extending beyond those limits that the whole of the inlet forms part of the territorial waters of Russia.

Where the mainland coast is indented by deep inlets forming part of the territorial waters of Russia, the line would still be measured from the line of the general direction of the mainland coast, which would cross the inlet at its mouth in a path so far coincident with the limit of the territorial water (that is to say, from headland to headland) as might be consistent with the

preservation of its character as a general, and not a detailed, line.

The line would not be measured from the heads of inlets of the kind referred to. According to the British contention, the continuity of the fringe is liable to be broken, on the mainland, not only by the mountain boundary (where found) crossing inlets, but also (where mountains do not occur) by the 10-league boundary doing so.

The British view is that the shore-line of inlets of the kind in question, whether at their head or along their sides, does not affect the datum line furnished by the coast, and therefore does not affect any line ascertained from that datum.

It is submitted that the line of the coast of the Ocean cannot be construed as following the shores of long, narrow, and deep inlets which occur upon it. So far from forming part of the coast of the Ocean, such inlets break its continuity. They form in the strictest sense territorial waters of the Power to which the land on each side of such inlets belongs. They are in no way wanted for the navigation of the vessels of other Powers, unless such right of navigation has been granted by Treaty or is required for the purpose of lawful access to the shores of such inlets.

The British position on this point may be illustrated by reference to the concrete cases of the Bradfield Canal, the Endicott and Tracy Arms, the Snettisham Inlet, the Taku Inlet, and the Lynn Canal, with its branches Chilkat Inlet, Chilkoot Inlet, and Taiya Inlet.

On the general question of territorial waters, reference may be made by way of illustration to the Convention concerning the fisheries in the North Sea, to which effect was given by "The Sea Fisheries' Act, 1883" (46 and 47 Vict., cap. 22), the Convention as set out in the first schedule to the Statute, and the second Article is as follows:—

"As regards bays, the distance of three miles shall be measured from a straight line drawn across the bay, in the part nearest the entrance, at the first point where the width does not exceed ten miles."

It will be observed that, as regards bays, the territorial limit of three miles is to be measured

from a line drawn across the bay at the first point where the width does not exceed ten miles.

It is submitted that the principle invoked in this Convention for the purpose of determining the point from which the three miles of territorial waters should be measured is one to which regard may properly be had in determining what is to be treated as the line of the coast for the purposes of the present Treaty.

Bradfield Canal, Endicott and Tracy Arms, the Snettisham Inlet, and Taku Inlet are all land-locked waters, which, for the present purpose, it is submitted are indistinguishable from the rivers of which they are the estuaries.

With regard to Lynn Canal, if the rule adopted in the North Sea Convention is followed, the general line of the coast must be treated as crossing the Lynn Canal in latitude $58^{\circ} 22'$ and longitude $134^{\circ} 53'$, being the first point from its entrance, where the width does not exceed ten miles. Even if a stricter rule were to be applied in the present case, it would be found that at latitude $58^{\circ} 46'$ and longitude $135^{\circ} 07'$ the width of the Lynn Canal does not exceed 6 miles, and it is submitted that, by no possibility, can the general line of the coast be placed higher up the Lynn Canal than at this point. A glance at the physical conformation of Chilkat Inlet, Chilkoot Inlet, and Taiya Inlet is enough to show that the shores of these inland waters cannot be treated as the line of the Ocean coast, and yet the contention of the United States appears to be that the heads of these inlets are to be treated as the starting-point from which the *lisière* at this point is to be measured.

It is submitted that all such inlets form, for the present purpose, no part of the Ocean, that, for the purposes of the Treaty, they stand on the same footing as the rivers which flow into the Ocean either directly or through such estuary, and it is only the British contention which gives effect to the scope and to the specific provisions of the Treaty.

SEVENTH QUESTION.

The seventh question is as follows :—

Seventh Question.

“WHAT, IF ANY EXIST, ARE THE MOUNTAINS REFERRED TO AS SITUATED PARALLEL TO THE COAST, WHICH MOUNTAINS, WHEN WITHIN 10 MARINE LEAGUES FROM THE COAST, ARE DECLARED TO FORM THE EASTERN BOUNDARY ?”

Great Britain contends that there are such mountains, and that they are to be found fronting the general coast of the mainland along the whole coast from latitude 56 degrees northwards.

It is to be observed in the first place that the mountains contemplated by the Treaty were described as follows :—

“La crête des montagnes situées parallèlement à la côte (Article III). App. I, p. 38.

“La crête des montagnes qui s’étendent dans une direction parallèle à la côte depuis le 56° degré (Article IV).”

This indicates a general parallelism only. Mountains being a natural feature could not, of course, be expected to run uniformly parallel to the coast, whether straight or winding. In this they differ from the arbitrary 10-league line which, especially as it would only fall to be drawn through a country where mountains failed, might be drawn with substantial accuracy parallel to the general line of the coast. Moreover, the Treaty contemplated that the mountains in question might vary in distance from the coast, from its very edge to the extreme limit of the 10 marine leagues, without sacrificing their general parallel character.

It is further to be observed that the mountains were not to be unbroken. This is clear from the circumstance that the line was to be crossed by rivers. According to the British contention, if there is a gap in the mountains not amounting to a discontinuance of the general line traced by them, this is not to be regarded as interrupting the mountains for the purpose of the line any more than the mouth of a narrow inlet, or the base of a narrow peninsula would be regarded as interrupting the general line of the coast.

Where a gap of this character is found in the mountains on the occurrence of a river, a narrow

inlet or a narrow valley, the line should be continued across that gap and should not be suddenly set back up the gorge of the river or the course of the inlet or valley to the 10-marine-league point. The 10-marine-league line applies to supersede the mountain only where the mountains cease altogether or recede beyond the 10 marine leagues. In the latter case the artificial line begins where the mountains cross the 10-league limit and ceases where they recross it.

According to the British contention, the phrase "*la crête des montagnes*" signifies the tops of the mountains adjacent to the sea. It was introduced as a concession from the line along the base of this slope proposed by Mr. Canning. The governing idea was that this slope was to be Russian. Whether, when the top of the slope had been attained, it should be found to be backed by a mass of peaks or to end in a ridge descending on the other side to a plain did not concern the Russians, who bargained only for the slope.

The mountains were to be the mountains next the sea. It will be convenient to collect from the correspondence recording the negotiations the passages in which they are described.

App. I, p. 70.

A boundary by mountains is first proposed in the Russian counter-draft delivered to Sir Charles Bagot in February 1824. They are described as "*montagnes qui bordent la côte.*"

Ibid.

The same phrase is used in Sir Charles Bagot's amended proposal which is the next document.

Ib., p. 71.

In the Russian observations on this amended proposal the words are "*la chaîne de montagnes qui suit à une très petite distance les sinuosités de la côte.*"

Ib., p. 76.

In Count Nesselrode's despatch of the 17th April, 1824, it is "*des montagnes qui suivent les sinuosités de la côte.*"

Ib., p. 78.

When the suggestion is laid before the Hudson's Bay Company they ask for "some more definite demarcation on the coast than the supposed chain of mountains contiguous to it"; they speak of the scanty information available as to "the country in the immediate neighbourhood of the sea"; and they propose as the boundary "the nearest chain of mountains, not exceeding a few leagues of the coast."

Ib., p. 85.

In writing to Sir Charles Bagot on the 12th July, 1824, Mr. Canning suggests a line * * * * * "following the sinuosities of the coast, along the base of the mountains nearest

the sea," and he particularly refers to the point that it is the "seaward base" that is referred to.

In Count Lieven's Memorandum of July 1824 App. I, p. 91. he speaks of "la base des montagnes qui suivent les sinuosités de cette côte," and he refers to the possibilities that they slope "jusqu'aux bords même de cette côte." On the matter again coming before the Hudson's Bay Company they once more emphasize the necessity of more accurately defining the eastern boundary "than by the chain of mountains at a 'très petite distance de la côte.'" Ib., p. 80.

In Mr. Canning's despatch of the 8th December, 1824, the phrase is, "the mountains which run parallel to the coast, and which appear, according to the map, to follow all its sinuosités." Ib., p. 113.

In Count Nesselrode's despatch of the 13th March, 1825, it is, "la crête des montagnes qui suivent les sinuosités de la côte." Ib., p. 131.

The same conclusion is indicated by the expressions as to the character of the *lisière*.

In the negotiations which took place in February and March 1824, the Russian desideratum is thrice described by them as a "point d'appui" and once as "un portion de territoire sur la côte."

In Count Nesselrode's despatch of the 17th April, 1824, it is, "ne . . . qu'une étroite lisière sur la côte même," "une simple lisière du continent," "une médiocre espace de terre ferme," "uniquement un point d'appui." Ib., p. 75.
Ib., p. 76.
Ib., p. 77.
Ib., p. 78.
Ibid.

Mr. Canning, on the 29th May, 1824, writes of "the strip of land required by Russia." Ib., p. 81.

From this point in the correspondence the word *lisière* is used without qualification to denote what the parties now thoroughly understood to be referred to.

Great Britain contends that this view cannot be sustained with reference to the topography of this region, and that as the Treaty is to be followed the line must be drawn according to the contention of Great Britain.

The identification of the mountains further depends (as has already been shown in the argument submitted upon Question V) upon the identification of the "côte" to which their direction is to be parallel.

It is to be observed that if "côte" includes the shore of the inlets, the mountains to be sought are those parallel to that shore, and a line drawn on this principle would give to Great Britain

the interior not only of the stretches of territory between the inlets, but also of peninsulas running out beyond the coast-line, if there are mountains running parallel to the shore. Great Britain does not put forward the contention that this is the true boundary, but if the contention of the United States that "côte" includes the shore of inlets is well founded, Great Britain will maintain that it certainly includes also the shore between the mouths of the inlets and the shore of peninsulas, and that the principle must be applied in favour of Great Britain as well as against her.

The contention of Great Britain as to the interpretation to be put upon the word "côte," and as to the considerations which are to be regarded in identifying the mountains parallel thereto, have now been set forth. The result upon the ground which the adoption of those contentions would give must now be indicated.

App. II. Map
No. 37.

The point of departure is, as has already been submitted, the point where the crest of the coast mountains is found on the 56th parallel. Great Britain suggests as answering this description the point shown on the map in the Atlas herewith in longitude $131^{\circ} 42'$. This is where the mountains finally leave latitude 56° and run north. The coast just south of latitude 56° turns, however, suddenly to the east, and it may be that a point on the crest of the mountains parallel to the coast may be found on the 56th parallel more to the eastward. The adoption of such an alternative would not affect in principle the British contention.

App. I, p. 307
et seq.

From the point of departure above suggested, the line proposed by Great Britain follows the mountains northwards as shown on the map referred to. The particular mountains and ridges followed with the reasons for selecting them are set forth in a declaration to be found in the Appendix by Mr. W. F. King, the British Commissioner upon the Survey under the Convention of 1892. It will, of course, be understood that this is not put forward as showing throughout the only possible way of giving effect to the British contentions, but that it is susceptible of any variations in detail which may commend themselves to the Tribunal in examining the topographical conditions met with in tracing the line.

CHAPTER V.

ACTS SUBSEQUENT TO THE TREATY.

THE Tribunal is to consider in the settlement of the questions submitted to its decision, not only the original text of the British-Russian Treaty of 1825, and of the Treaty of cession of Russian America to the United States in 1867, but also—

1825-1867.

“ANY ACTION OF THE SEVERAL GOVERNMENTS, OR OF THEIR RESPECTIVE REPRESENTATIVES, PRELIMINARY OR SUBSEQUENT TO THE CONCLUSION OF SAID TREATIES, SO FAR AS THE SAME TENDS TO SHOW THE ORIGINAL AND EFFECTIVE UNDERSTANDING OF THE PARTIES IN RESPECT TO THE LIMITS OF THEIR SEVERAL TERRITORIAL JURISDICTIONS UNDER AND BY VIRTUE OF THE PROVISIONS OF SAID TREATIES.”

The actions of the parties previous to the Treaty of 1825 have already been discussed. The remaining period naturally divides itself into two, the actions of the parties from 1825 to 1867, and subsequently from 1867 to the date of the present Convention, the 24th January, 1903.

It does not appear that even up to the time of the cession in 1867 either Great Britain or the United States had acquired any but a very dim idea of that remote part of the New World. The United States, being nearer to Russian-America than any European country, and closely connected with it by trade, had been considering the purchase of the territory during the Administration of Mr. Polk and Mr. Buchanan, and had made a definite suggestion to purchase in December 1859. If any exact information of the district from 1859 to 1867 were available, it would certainly be in the possession of the United States' public men, and could not have escaped the Hon. Charles Sumner, Senator for Massachusetts, whose speech advocating the purchase of Alaska is put forward as the embodiment of expert knowledge regarding Alaska at that time. Yet Sumner declared in 1867 that “perhaps no region of equal extent on the globe, unless we except the interior of Africa or possibly Green-

An Unknown Territory.

H. R., 40th Cong.,
2nd Sess., Ex.
Doc. No. 177,
pp. 124 *et seq.*

land, is as little known," and cites the description of it given by the poet Campbell in the "Pleasures of Hope," "While exploring earth's loneliest bounds and Ocean's wildest shore."

The Russian-American Company and
the *lisière*.

Case, p. 12.

App. I, p. 150.

Alaska, p. 591.

It seems impossible to conceive of any local act performed in those remote regions by Russia during that early period of which Great Britain could be said to have been made aware by any means except direct communication or correspondence with Russia. It has been shown that no such posts had been established by the Russians on the disputed territory previous to the Treaty of 1825. By the negotiations leading to that Treaty it appears that the *lisière* was sought simply as a "point d'appui," so that it might not be adversely occupied. The lease to the Hudson's Bay Company, 6th February, 1839, provided for the return of only one Russian post at the expiry of the lease, that of Highfield, situated, not on the *lisière*, but on Wrangel Island, a part of the Russian possessions, and in no way in dispute. This seems sufficiently conclusive that there were no other posts. Bancroft, speaking of the cession of 1867, states that Russia herself had never occupied and never wished to occupy this territory—meaning, it seems, the whole territory of Russian America.

Hudson's Bay Company Lease from Russian-American Company of 6th February, 1839.

App. I, p. 150.

The lease by the Hudson's Bay Company of the 6th February, 1839, from the Russian-American Company, cannot be put forward as affecting the boundary question. The lease sets up no boundary. It is impossible to detect the recognition of any sovereignty on the part of Russia, except over that portion of the territory given her by the Treaty. That Russia possessed some portion of the mainland could not then be denied. If the Hudson's Bay Company, for the purpose of disposing of a disagreeable competitor in the fur trade, and to avoid a recurrence of the Stikine incident of 1834, chose to lease "say the whole mainland, coast, and interior country belonging to Russia," it cannot be argued that it thereby leased something that did not belong to Russia, or that Great Britain thereby gave Russia something more than she had previously possessed. The Company already enjoyed a monopoly of the territory on the British side of

the line. By the lease it secured a similar monopoly on the Russian side. It was a matter of indifference to it whether its rights were derived from its British charter or its Russian lease, and no question as to the true location could possibly arise.

The history of the *lisière* from the Treaty of 1825 until 1867 is simple enough. As has been said in the course of the diplomatic correspondence, the only value of the region during the first ten years after 1825 lay in the fur trade, and that trade was thrown open on equal terms to the subjects and citizens of Great Britain and Russia, by Article VII of the Treaty between Great Britain and Russia of 1825, and, before the expiry of the ten years, events, which resulted finally in the lease to the Hudson's Bay Company, of the trade of the whole of a *lisière* southward and eastward of a line joining Cape Spencer and Mount Fairweather, had occurred.

History of *lisière*.

1825-1867.

The circumstances leading to the lease are well known as "the Stikine incident." The clause of the Treaty throwing open the trade in furs would terminate by effluxion of time in 1835. In 1833-34 a Hudson's Bay expedition proceeded to Stikine River for the purpose of exploring it and establishing a post on the upper portion of the river. In June 1834 the expedition was prevented by the Russians from ascending the river. This was in manifest violation of the Treaty inasmuch as British subjects had the right to the free navigation of the river, and the upper portion was, under any interpretation, in British territory.

Stikine River Expedition.

1833-1834.

On the 24th October, 1835, the Governor of App. I, p. 155.
the Hudson's Bay Company wrote Lord Palmerston complaining of the infraction of the VIth and VIIth Articles of the Treaty of 1825, and claiming 22,150*l.* damages. On the 28th January, 1836, the Hudson's Bay Company was Ib., p. 158.
informed that the Russian Government disavowed the action of its servants, and promised to convey His Imperial Majesty's displeasure over what had been done. The damages were not paid, however, but a negotiation followed, which led to the leasing by the Hudson's Bay Company of the territory of its rival. Part of the consideration of the lease was the damage which had been

suffered by the Hudson's Bay Company through the stoppage of its expedition up the Stikine. The lease was not brought about by any dispute as to the boundary line but by the desire of the Hudson's Bay Company to avoid unnecessary friction by illegal acts of the Russians, of which the above is an example, and by the further desire to enjoy a monopoly of the trade.

The Hudson's Bay Company's Lease and Renewals.

Termination of Lease, 31st May, 1867.

App. I, p. 136.

The original Agreement was made the 6th February, 1839, the lease to commence the 1st June, 1840, and to last ten years. A supplementary Agreement was entered into the 17th May, 1842. The lease was renewed in 1849, and on the 28th December, 1858, the lease between the two Companies was extended to the 1st January, 1862. It was further extended till June, 1865, and in May, 1866, again for one year, terminating on the 31st May, 1867 (see Declaration on p. 306 of Appendix I). As the Treaty of 1867 was concluded on the 30th March, 1867, it will be seen that, until after the cession of 1867, the *lisière* was under lease to the Hudson's Bay Company.

There is no evidence that Great Britain either approved or disapproved of the lease, nor was the Hudson's Bay Company, during the period in question, in any sense a representative of the British Government, and no action of the Company could possibly affect the question at issue.

Proceedings of Select Committee of British House of Commons of 1857.

Report from the Select Committee on the Hudson's Bay Company, ordered by the House of Commons to be printed 31st July and 11th August, 1857.

pp. iii *et seq.*

The proceedings of the Select Committee of the British House of Commons in 1857, "to consider the state of those possessions in North America which are under the administration of the Hudson's Bay Company, or over which they possess a licence to trade," lend no countenance to United States' contention.

In 1838 the Hudson's Bay Company had been granted the licence of exclusive trade over that north-western portion of British America known as the Indian Territory. In 1857 this licence was about to expire, and the Committee met to consider the conditions of the territory which the Hudson's Bay Company had administered under its licence. The people of Canada east of Lake Superior felt that the means of extension and regular settlement should be afforded to

them over a portion of this great territory, particularly the Red River Valley and the Valley of the Saskatchewan. The Canadian western boundary in 1857 did not extend much beyond Lake Superior in the centre of the Continent. As a matter of fact, the territory in question was not then a part of Canada, and Canada was at that time in no way concerned in that remote part of British North America. The question of the boundary-line between the *lisière* and British territory was in no way the subject of the inquiry.

Report from the Select Committee on the Hudson's Bay Company, ordered by the House of Commons to be printed 31st July and 11th August, 1857, p. 210.

In passing from the period extending from 1825 to 1867 to that extending from 1867 to the date of the present Convention, the 24th January, 1903, the relations of Great Britain and the United States, become the subject of consideration.

It is, perhaps, not strictly necessary that the facts bearing on these relations should be taken up in the original presentation of the British Case. They might be more properly dealt with in reply. It is only because it may be more convenient that the Tribunal should be made conversant, in the first instance, to some slight extent, at least, with the contentions of both sides in this connection, that any effort is made to deal with them now. Anything that is advanced at this stage of the Case, dealing with these subjects, is therefore given with a full reservation of the right to deal with the same subjects more fully in reply.

More Recent Acts.

1867—1903.

The facts as to the occupation of the territory after the acquisition by the United States are as follows:—

Occupation by the United States.

The formal occupation of the newly-ceded territory is described in Bancroft's "History of Alaska," at pp. 594—600 *et seq.* It appears that with some ceremony the United States' flag was unfurled at Sitka on the 18th October, 1867. Fort Tongass appears to have been established in 1867, and was visited by transports with garrison supplies. A United States' military force was sent to Cook's Inlet in 1868. There were also some troops at Wrangell.

Alaska, pp. 594—600.

Sitka, Tongass, and Wrangell were all situated on islands, and Cook's Inlet lies far to the west

Pacific Coast Pilot, Alaska, Part I, second series, 1883, p. 61. Ibid., citation from Wythe's, Cook Inlet, p. 65, Alaska, p. 606, note 33.

of the territory in dispute, and on the Russian side of the 141st meridian.

Report on Alaska
by Morris, p. 26.
45th Congress, 3
Session, Sen.
Ex. Doc. 59.

In his letter of the 23rd May, 1877, ordering the return of the troops from Alaska, the Assistant Adjutant-General concludes with these words:—

“Upon the departure of the troops, Sitka and Fort Wrangell will be discontinued as military posts,” and “all control of the military department over affairs in Alaska will cease.”

There is nothing to show that upon the transfer a detachment was stationed at any time on the strip of mainland.

Absence of United States' control
throughout the *lisière*.

As to the extent to which legislation and the enforcement of law and order had been developed in Alaska generally up to a recent day, the following quotations from Bancroft may be made:—

Alaska, p. 602.

“The Company and the Imperial Government gave them at least protection, sufficient means of livelihood, schools, a church; but in this vast territory, there never existed, since 1867, other than a semblance even of military law. There was not in 1883 legal protection for person or property, nor, apart from a few regulations as to commerce and navigation, had any important Act been passed by Congress, save those that relate to the preservation of seals, the collection of revenue, and the sale of fire-arms and fire-water.”

and—

Ib., p. 604.

“As there was no legal title to land in Alaska, there could be no legal conveyance nor mortgage, though conveyances were made occasionally and recorded by the Deputy Collectors at Wrangel and Sitka, the parties concerned taking their own risk as to whether the transaction might at some distant day be legalized.

“Miners and others whose entire possessions might lie within the territory, and who might have become residents, could not bequeath their property, whether real or personal, for there were no Probate Courts nor any authority whereby estates could be administered. Debts could not be collected except through the summary process by which disputes are sometimes settled in mining camps. In short, there was neither civil nor criminal jurisdiction in any part of Alaska.”

Establishment of Schools.

Schools have not been maintained in Alaska from the time of the Treaty of Cession, or to any

extent during any considerable period. Petroff, Special Agent of the United States, in his Report of the 7th August, 1882, to the Superintendent of the Census, says :—

“ At present the only schools in all western Alaska where English is taught are on the Pribilof Islands and Iliuliuk settlement, Unalaska, both being maintained at the expense of a trading firm.”

Later on in the same Report he says :—

“ At the location of all parish churches it is supposed or expected that schools will be maintained by the Church authorities, but as already mentioned, there is much laxity in this respect, and at least 20,000 natives are entirely without the remotest influence of church or school—a fact our Board of Foreign Missions might take into consideration.”

This appears, then, to have been the condition of educational development seventeen years after the Treaty of Cession.

Presbyterian missionaries, according to Petroff, had established schools on several of the outlying islands and at some of the Chilkat villages on Lynn Canal, but he nowhere claims that they were recognized by the United States' Government or supported by public money.

The very slight nature of the control occasionally exercised by the United States over the inhabitants of Alaska may be illustrated by reference to the incidents of 1869 and 1890.

The events of 1869 are described in the Report of Ivan Petroff, Special Agent of the United States, before referred to :—

“ On the 1st January, 1869, the Chief of the Chilkat tribe was on a visit to Sitka with sixty or seventy warriors, and paid his respects to General Davis, who made him a present of a few bottles of whisky.”

The Special Agent proceeds to describe the effects of the whisky on the Chief, the subsequent collision with the military, the shooting of some Indians and prospectors, the excitement caused by the news that the crew of the wrecked schooner “ Louisa Downs ” had been massacred, the prompt burning of three deserted villages in

* Report on the population, Industries, and resources of Alaska, by Ivan Petroff, Special Agent, to Superintendent of Census of United States, 7th August, 1882, in “ Seal and Salmon Fisheries, and General Resources of Alaska,” vol. iv, p. 227.

Ib., p 229.

Visits of United States' naval forces to the head of Lynn Canal in 1869 and 1890.

* Hereafter referred to as “ Petroff.”

which "not a hostile warrior was seen," and adds:—

Petroff, p. 357.

"Some time later it was discovered that the shipwrecked crew had not been killed, but rescued by these savages and treated kindly."

The only other reference to 1869 is the following:—

Ibid

"In the month of July of the same year, the Chilkat Indians, who had still a life to their credit on account of the trouble in Sitka in the month of January, boarded a small trading vessel, and demanded a life or money. A written guaranty for the settlement of the claim was given, and the matter reported to the Commanding Officer at Sitka, who, however, refused to have anything to do with it. Upon this, the trader who had given the security paid the claim, thus securing peace to the country, and after this the Indians submitted to the General's demands."

It does not appear that any even of these events occurred on the territory now in dispute. The United States' trading vessel does, however, appear to have submitted to the Indian demands, and another United States' trader seems to have paid the Indian bill.

In 1890, as it has been alleged, some cannery owners sent to Sitka for aid against some Indians in Lynn Canal. A vessel arrived, and the Indians were invited on board and feasted. Nothing further appears to have been done.

Another passage from Petroff may be quoted in this connection:—

Ib., p. 360.

"In 1878 the Sitka Indians began to comport themselves in the most insolent manner, defacing the graves in the Russian cemetery, pulling down the stockade, separating the town from the Indian Settlement, and committing other similar outrages. At that time not even a revenue cutter was present in the harbour, and the inhabitants, becoming very much alarmed, sent an appeal for immediate protection to the Commander of an English man-of-war in the harbour of Victoria. The assistance was promptly rendered, just in time, it was claimed, to prevent disaster; opinions on that subject were, however, divided. In due time the English man-of-war was relieved by a similar vessel of the United States' navy, and since that time a vessel of that class has been constantly stationed in the harbour of Sitka, affording protection and assisting the inhabitants of South-Eastern Alaska in various ways."

It thus appears that an American ship interfered to save life on Lynn Canal, and a British

ship performed the same office for the Americans at Sitka. Both England and Canada were unaware of these events; nor does Great Britain lay claim to Sitka because of the timely aid her vessel was able to afford.

With reference generally to the claims of occupation set up by the United States because of certain isolated acts of her citizens, as, for instance, the establishment of a mission school by the Presbyterians at Pyramid Harbour about 1881, a private store at Taiya Inlet in 1882 or 1883, and of one or two canneries at Pyramid Harbour about 1883, it cannot be contended that these individual acts of possession are of any importance as bearing on the Case. The United States had officially declared that "all claims of pre-emption and settlement in Alaska were not only without the sanction of law, but were in direct violation of laws applicable to the public domain." Individual acts of possession in Alaska therefore would be in violation of American law. It cannot be presumed in the absence of proof that the people who located in the territory now in dispute did so in assertion of or in reliance on the sovereignty of the United States.

Isolated acts of possession by United States' Citizens treated generally.

H. R., 55th Congress, 1st Session, Doc. No. 92, Part iv, p. 121.

Up to this point this account has been taken up with the annals of an unknown region. Apart from the visits of occasional Alaska tourists, who found their way north to escape the summer heat and enjoy the novel scenery of the cloud-drenched coasts, and snow-capped mountains, and beyond the few engaged in the canning industries no one came to disturb the silence of the *lisière* or the peace of the aboriginal inhabitants. It was as unknown as the interior of Africa or possibly Greenland when Mr. Sumner spoke in 1867. For years conditions remained unchanged, and until 1896 the Governments of Great Britain or Canada knew little or nothing of the movements of the people along that remote north-west coast.

Recent Acts.

Reference will now be made to the cases of Dyea and Skagway, two Settlements at the head of the Lynn Canal. It is understood that it is claimed, on the part of the United States, that

Dyea and Skagway.

their possession of these places arose and continued under circumstances which should influence the Tribunal to so delimit the boundary as to leave these places within United States' territory.

This contention is wholly disputed.

The Rush to the Klondike Gold Fields.

When in the summer of 1896 rich gold-fields were discovered in the Canadian-Klondike district upwards of 500 miles in the interior from the head of Lynn Canal, and the news gradually reached the outer world during the next six months, the eyes of the people of North America were suddenly turned towards this hitherto unknown and almost inaccessible region. Tens of thousands of people in the early spring of 1897 started for "The Klondike," as the new mining district was popularly termed. The shortest way to it was by the Lynn Canal over the Skagway (White) and Chilcoot Passes and down the Yukon River. The pilgrims were of various nationalities, but mainly United States' citizens. Many stopped at Dyea and Skagway, while others pushed on over the passes to the gold-fields. By this movement of travel Dyea and Skagway came into existence. If there had previously been one or two isolated and temporary squatters at these points, their presence could not, it is believed, be shown to be of such a character as to constitute a settlement by or on behalf of the United States. It is to be particularly noted that this movement of population took place as a movement toward the Canadian Klondike, and the Settlements of Dyea and Skagway were an incident thereof, and came into existence wholly without reference to the question as to whether the sites of these Settlements were in British or United States' territory. In the early summer of 1897, therefore, the position was that some thousands had got over the passes, others were camped at Dyea and Skagway, and the movement was rapidly growing. Food and supplies had to be transported from the cities of the Pacific coast through Lynn Canal and over the passes.

It will be observed that this traffic had to pass from the towns and cities of British Columbia and the Pacific Coast States through the waters which separate the islands and strip of coast owned by the United States to the mouth of Lynn Canal, and thence over the frontier, wherever it might be, into the Canadian territory.

Under these circumstances, the Canadian Government was forced by the imperious necessities of the case to make provision for the traffic, and this explains their subsequent action.

British vessels were met by the fact that the regulations governing the action of the United States' revenue officers in charge of Alaskan ports were interpreted by them as forbidding landing from any British vessel anywhere on the shores of Lynn Canal, Juneau on the Gastineaux Channel being the only port of entry in this part of the territory.

These regulations were put in force, notwithstanding that Canada's claim to the territories at the head of Lynn Canal was at the time well known to the United States' Government. A reconnaissance having been made by Lieutenant Schwatka, of the United States' army, in the year 1883, of the passes from the Lynn Canal to the Yukon, embraced in the disputed territory, the Canadian Government in 1887, as already stated in this Case, shortly after they had official notice of his report, caused a protest to be lodged with the Government at Washington against the implied claim of Lieutenant Schwatka that this pass, called by him Perrier Pass, and now known as the Chilkoot Pass, was in United States' territory. Again, in 1888, the Canadian Government forwarded a further protest to Her Majesty's Government for communication to the United States' Government against a rumoured attempt of the United States to exercise jurisdiction at the White Pass, claiming it as British territory; and in the same year, during the currency of the Fishery negotiations at Washington, Dr. G. M. Dawson, as representing Her Majesty's Government, in an informal conference with Mr. Dall, representing the United States, put forward the contention that the territories surrounding the head of Lynn Canal were British. The report of the conference between Dr. Dawson and Mr. Dall was subsequently laid before Congress by President Cleveland, in his Message dated 2nd March, 1889. In recommending to the President the publication of these documents, the Secretary of State observed:—

"These documents are considered of value as bearing upon a subject of great international importance, and should be put in shape for public information."

United States' Revenue Regulations.

Canada's Claim well known.

The Chilkoot Pass.

Canada's Protest.

App. I, p. 257.

The White Pass.

Canada's Protest.

Ib., p. 264.

The Dawson-Dall Correspondence.

Ib., p. 259 *et seq.*

The President's Message.

50th Congress,
2nd Session,
Sen. Ex. Doc.,
No. 146, p. 1.

The Convention of 1892.
—

App. I, p. 269.

Report of Commissioners.
—

Ib., p. 282.

Boundary Question *sub judice*.
—

The United States' Revenue Regulations.
—

Canada's Position.
—

Ib., p. 289.

Consequent Negotiations.
—

Ibid.

Ibid.

Dyea a Sub-port of Entry—Canada's
Reservation.
—

Ibid.

Indeed, by the year 1892, such a diplomatic *rapprochement* had been arrived at between Great Britain and the United States with reference to the ascertainment of the true boundary that on the 22nd July of that year a Convention, hereinbefore referred to, was entered into between the two countries for a survey, with a view to the delimitation of the line in accordance with the spirit and intent of the Treaties. By this Convention, it was agreed that the boundary was to be considered and established as soon as practicable after the receipt of the Report of the Commissioners. That Report was signed on the 31st December, 1895, and laid before the Parliament of Canada and the United States' Congress early in 1896. The position was, therefore, that the High Contracting Parties had not had time to meet to consider the boundary-line, and the matter was still *sub judice*.

It is obvious that if the Canadian Government had instructed British vessels to disregard these Regulations, there would have been grave danger of a serious collision. Instead of pursuing a course thus at variance with sound and prudent international practice, the Canadian Government opened communication with the Government of the United States, and proceeded to make the best arrangement possible for the protection of her trade with the Yukon, while at the same time reserving her rights as to the ultimate determination of the boundary. On the 22nd July, 1897, the Canadian Commissioner of Customs inquired of the United States' Treasury Department if Canadian goods could pass from Juneau, Alaska, to the Yukon frontier without payment of customs duties if owners paid for United States' officers accompanying the goods. The Assistant Secretary of the Treasury, in reply, inquired if it would facilitate matters to make Dyea a sub-port of entry. On the following day the Canadian Commissioner of Customs replied that it would facilitate matters if Dyea were made a sub-port of entry "pending settlement of boundary question," and requested that, if this arrangement were agreed to, the Treasury should issue instructions to allow British steamers from Canadian ports to land and receive passengers and goods at Dyea. This arrangement was approved of on the same day, "merchandise to be accompanied by a Customs officer at expense of owners." On the 19th August

following the Canadian Acting Minister of Customs sent the following despatch to the United States' Treasury Department:—

"Freight and passengers for Yukon are going in by White Pass, and the landing is at Skagway Bay, three miles south of Dyea. American vessels deposit freight and passengers at the bay, but privilege refused to Canadian vessels. Customs officers can as conveniently pass entries at Skagway as at Dyea. Will you please instruct officials by wire to extend privilege of landing at Skagway Bay to Canadian vessels as conceded to American vessels." App. I, p. 290.

On the day following the Canadian Acting Minister of Customs received the following reply from the Treasury Department:—

"On the 6th instant, limits of Port of Dyea were extended to include Skagway, and deputy in charge instructed accordingly. This action gave Canadian vessels same rights as vessels of United States." Ibid.

Four important facts are made evident by this correspondence:—

Four Important Facts.

1. The objective point referred to in the first Canadian communication is the "Yukon frontier," no special locality being mentioned.
2. The reference to Dyea and the proposition to make it a sub-port of entry came from the United States' Government.
3. Canada, in accepting this proposition, expressly provided that her acceptance was "pending settlement of boundary question."

1. The necessity of the Case requiring immediate action rendered it quite impossible for the Canadian Government to adopt any other course than that which was followed.

A few months later the Canadian Government, in the early part of the year 1898, formally protested to the Imperial Government that the United States had established a sub-port of customs at Dyea, in territory which they claimed was rightfully British, and urged the desirability of establishing the boundary-line as contemplated by the Convention of 1892. An agreement was subsequently reached for establishing a provisional line as a boundary, but without prejudice to the claim of either Government, and matters have since remained *in statu quo*. lb., p. 305.

Canada protests, and urges Delimitation of Boundary.

The Provisional Boundary.

It is submitted, therefore, that the claims put forward by the United States' Government to hold Dyea and Skagway as Settlements made without notice of adverse rights, and without any mutual communication saving the rights of

The Result.

Great Britain, are not claims which are justified by the facts.

Occupation of Wales and Pearse Islands.
—

Construction of Storehouses in 1896.
—

App. I, p. 293.

It is necessary to refer to one other alleged act of possession on the part of the United States—the construction of certain storehouses on Wales and Pearse Islands, territory claimed to be British. These storehouses were constructed by the United States' Government in the summer of 1896, but nothing was known with regard to them by the Canadian Government until the year 1901.

In October 1901, it was discovered that on Chart No. 3091, published by the United States' Coast and Geodetic Survey, of part of the Pacific coast, the following names appeared:—

"St. House No. 1," on the eastern shore of Wales Island.

"No. 2 Storehouse," on the eastern shore of Pearse Island.

"United States' Storehouse No. 3," on the shore of Halibut Bay, which is a small indentation of the western shore of Portland Canal.

"United States' Storehouse No. 4," on the western shore of Portland Canal, to the north of the mouth of Salmon River, near the head of Portland Canal.

The exact point designated by the name was indicated on the chart in each case by a small dot.

Ib., p. 294.

An inquiry was at once directed to the United States' Government "as to the nature of the storehouses and the reason for their erection in this territory, the title to which was and still is the subject of diplomatic negotiation." In February 1902, Secretary Hay replied:—

Canada's Inquiry.
—

Ibid.

The United States' Reply.
—

"That the storehouses are upon territory which has been in the possession of the United States since its acquisition from Russia, and that the designation of Portland Canal is such as has been noted on all the charts issued by the United States since that acquisition," and added—

Ib., p. 295.

"I am not aware that the Government of His Britannic Majesty ever advanced any claim to this territory before the signature of the Protocol of the 30th May, 1898, preliminary to the appointment of the Joint High Commission."

Ib., p. 300 *et seq.*

In his letter, Mr. Hay directed attention to a certain report of the Bureau of Engineers of the United States' army. From this report, it appears

that the storehouses in question had been built in 1896 by parties landed by a United States' revenue-cutter, which had been sent out for the purpose. This report further states that after the completion of each of the buildings referred to, the "flag was hoisted," "three cheers given," &c. In short, the usual formalities ordinarily observed in taking possession of newly-acquired territory were gone through with, and this, although all these regions so formally taken possession of by the United States are claimed by them to be part of that territory which they have held for seventy years of undisputed occupation by the Russians and themselves. Wales Island in particular, upon which one of these storehouses was erected, with these solemn formalities, is within a few miles, across a narrow channel (the Portland Canal of Vancouver) from Port Tongass, which was occupied by the United States as a military post for several years after 1867.

The formalities at Wales and Pearse Islands.

In reply to the above letter of Secretary Hay of February 1902, the attention of the Secretary of State of the United States was directed by Mr. Raikes, the British Chargé d'Affaires at Washington, to the note, addressed by Her Majesty's Minister at Washington to the United States' Secretary of State on the 5th June, 1891. Mr. Raikes, in his letter, said :—

App. I, p. 294.

Ib., p. 295.

"In view of a certain passage in the Report of the United States Coast and Geodetic Survey, your Government was reminded in this note, at the desire of the Government of Canada, that the question of the boundary in the neighbourhood referred to was the subject of some difference of opinion, and that the actual line could only be properly determined by an International Commission.

The British Protest of June, 1891.

"The Canadian Government point out that shortly after that date provision was made in the Convention of the 22nd July, 1892, for the delimitation of the boundary-line in accordance with the 'spirit and intent of the Treaties,' and an agreement was entered into that the boundary was to be considered and established as soon as practicable after the receipt of the Report of the Commissioners.

"That Report was signed on the 31st December, 1895, and laid before the Parliament of Canada and the United States' Congress early in 1896; but in the same year, before the High Contracting Parties had met to consider the boundary-line, and while the matter was still *sub judice*, the United States erected the storehouses on part of the 'territory adjacent,' which was the subject of the operations of the joint survey and of the diplomatic negotiations.

"The Canadian Government conceive that occupation effected under such circumstances would not, in international law, have any validity, but they are of the opinion that, nevertheless, the matter should not be allowed to pass without protest, and they have, therefore, expressed the desire that your Government should be informed of their views on the subject."

App. I, p. 296.

On the 16th September, 1902, the Acting Secretary of State of the United States formally acknowledged receipt of the above communication.

Summarised, the matter of these storehouses stands as follows :—

Summary.

Wales Island is close to Tongass Island, where for some years the United States had a military post, being separated therefrom by a narrow channel.

While the whole question of the boundary was *sub judice* under the Treaty of 1892, the United States formally sent a revenue-cutter to take possession of Wales and Pearse Islands, and did so take possession in the year 1896.

Of this action Canada knew nothing until 1901, when it was observed by an examination of the United States' chart; Canada then at once protested, and was informed :

1. That the storehouses were not shown on the United States' maps.

2. That the islands had been in the possession of the United States since 1867.

It thereupon transpired that although possession had been taken and reported, and the storehouses marked on one chart, the charts which followed did not show the storehouses. The accident of a Canadian official happening to see the one particular chart upon which the storehouses were marked, alone brought the incident to the attention of the Canadian Government five years after it had occurred.

CHAPTER VI.

CARTOGRAPHY.

IN the discussions of this question which have taken place, a number of maps have been at different times referred to. Of these maps those that are in the possession or control of the Representative of the British Government, so far as known, are reproduced in the Atlas which accompanies this Case, except such as are mere copies or reproductions of those which are so included in the Atlas.

Many of the maps referred to in the discussions are in such custody as not to be readily procurable for the purpose of having copies made. In such cases they have not been included in the Atlas.

It is believed, however, that sufficient have been included to make clear the arguments which are based upon the action of cartographers in relation to the subject in dispute.

The bearing of the maps, which have been compiled at various dates, upon the identification of the Portland Canal mentioned in the Treaty, has already been alluded to in this Case. It only remains to comment on such bearing as they may have on the line which runs from the head of Portland Channel.

With regard to maps generally, it is to be observed in the first place that their authority depends upon the degree of information to be attributed to their authors.

In considering whether the map makers who have shown upon their maps lines indicating a boundary had any adequate information to guide them, it is to be borne in mind that the question how the Treaty of 1825 affects the inlets on this coast has always been a question, not of the interpretation of the Treaty in the abstract, but of its application to the topography. Whether the line crossed any, and if so, what inlets was a matter which could not be decided till it was ascertained what was the true line of the coast, and what was the relation thereto of the various inlets and of the mountains bordering the coast. If this is the correct view of the question it is

Cartography.

obvious that the information within reach of the map makers in question was *nil*. There had been no survey, and the country was unfrequented and unknown.

It is contended that the line shown on these maps is really a theoretical line drawn to indicate broadly that a boundary existed in that region. This is not a case where a map maker is identifying natural features of the country as answering to any particular name; in which case the map might be evidence to show that at that time some persons, at any rate, understood such name as applying to such natural features. Nor is it a case where the map maker purports to depict the sites of settlements, the extent of discovery, or the like; in which cases the map might afford evidence of reputation or tradition. The maps of North-West America now under discussion simply purport to show the general course of a boundary existing, as yet, only on the paper of the Treaty which recorded it, deprived during all the years for which the *lisière* was under lease to the Hudson's Bay Company of any practical importance, traceable with reference to no local names, and resting on no facts known to the map maker. It is submitted that the Government of Great Britain should not be expected, before the question arose, to make any disavowal of the correctness of such maps. It would have been impossible for any one, whether Government official or private map maker, to pretend to trace the exact course of the boundary. As a matter of fact, everyone in any way brought into contact with the matter knew that the boundary was undetermined, and was incapable of being determined except by survey and by joint international action. No one, therefore, regarded the appearance of conventional and obviously inaccurate lines upon maps as having any significance.

The appearance of these lines seems to be accounted for by the fact that the known point of commencement in the continent was the head of Portland Canal. The line was, therefore, roughly drawn from the head of Portland Canal as an indication that there was a boundary somewhere in that neighbourhood, it being impossible to lay it down exactly by reference to the particular definition in the Treaty owing to complete lack of information in regard to the ground. When one cartographer adopted this plan,

others having no knowledge of the topography, and in the absence of any official interpretation of the Treaty, naturally followed the example of the first.

That these lines were wholly without authority and that they could not be considered as drawn in accordance, or even approximately in accordance with the Treaty, is clearly shown by Mr. Bayard, United States' Secretary of State, in App. I, p. 248. his letter to Mr. Phelps, United States' Minister at St. James', of November 20, 1885, already referred to in this Case. Mr. Bayard first quotes, with approval, a letter of Mr. Dall, the United States' Expert Officer, in which Mr. Dall says :—

“ We have no good topographical maps of this part of Alaska” Ib., p. 252.

“ We may then fall back on the line parallel with the windings of the coast. Let any one with a pair of drawing compasses, having one leg a pencil point, draw this line on the United States' Coast Survey Map of Alaska (No. 960, of 1884). The result is sufficient to condemn it. Such a line could not be surveyed: it crosses itself in many places, and indulges in myriads of knots and tangles. The line actually drawn as a boundary on that map omits the intricacies, and is intended merely as an approximation.”

Mr. Dall's Views.

Mr. Bayard then says :—

Ibid.

“ The line traced upon the Coast Survey Map of Alaska (No. 960), of which copies are sent to you herewith, is as evidently conjectural and theoretical as was the mountain summit line traced by Vancouver. It disregards the mountain topography of the country, and traces a line on paper about 30 miles distant from the general contour of the coast.”

Mr. Bayard expresses United States' View.

Mr. Bayard then specifically instructs Mr. Phelps to “bring the foregoing considerations to the attention of the Marquis of Salisbury,” instructions which were carried out in due course. It is demonstrated, therefore, that in 1885 the United States' Government officially disavowed to the British Government the correctness of this conventional line, adopted by their own and other cartographers, and declared that the line was not in accordance with the Treaty, and was merely conjectural.

The United States repudiates the Line of the Coast Survey Map.

The Earl of Iddesleigh in his letter of August 27, 1886, to Mr. Phelps, some months later, expressed substantially the same view on behalf of Great Britain. He said :—

“ In the note which you addressed to the Marquis of Salisbury on the 19th January last, you requested

that you might be furnished with a copy of the map of the Dominion of Canada, geologically coloured, from surveys made by the Geological Corps, 1842-1882, alluded to in Mr. Bayard's statement of the 20th November, 1885, with reference to the question of the Alaska frontier.

"In forwarding to you a copy of the map in question, I have the honour to invite your attention to the fact that the Alaska boundary-line shown therein is merely an indication of the occurrence of such a dividing line somewhere in that region. It will, of course, be clearly understood that no weight could attach to the map location of the line now denoted, inasmuch as the Convention between Great Britain and Russia of the 28th February, 1825, which defines the line, making its location dependent on alternative circumstances, the occurrence, or the non-occurrence, of mountains, and, as is well known to all concerned, the country has never been topographically surveyed.

"Her Majesty's Government, therefore, feel that they are bound distinctly to disavow the recognition of the correctness of the line shown on the edition of the Map in question, forwarded herewith, as the boundary-line between the Province of British Columbia and Alaska."

British and United States' Views Identical.

The positions of the United States and Great Britain upon this subject are therefore identical. In view of this fact, it becomes unnecessary to make any extended statement in reference to the appearance of this conjectural line on the various maps reproduced in the Atlas and on other maps which may be brought forward.

With a view to showing the diversity of the conventional and unauthorized lines drawn upon maps by the various cartographers, attention is drawn to the following:—

App. II. Map
No. 28.

A map of Alaska and adjoining regions was compiled by Ivan Petroff, Special Agent of the United States, tenth census 1880, published in United States' Census Report. This map shows a waving line not following the parallel of latitude, entering the mouth of Observatory Inlet, and crossing up into Portland Canal, running from the head of Portland Canal about 30 miles from the general line of the coast up to Lynn Canal, and then running a similar distance around the head of Lynn Canal. This line in some places treats the inlets as not forming part of the coast, and it measures the approximate 30 miles from the mouth of the inlets until it reaches Taku Inlet and Lynn Canal, when it adopts a different principle and appears to treat Lynn Canal as part of the Ocean.

Another map, printed in volume viii, 10th Census, United States, 1880, compiled by the same Ivan Petroff, Special Agent, has a line indicating the boundary which follows the same general principle as that immediately preceding, except that it assumes some point in Lynn Canal as the point where the coast stops, and shows the boundary-line apparently crossing the head of Lynn Canal, leaving a portion of it on the British side of the boundary-line.

Ap. II. Map
No. 80.

In the library of the United States' Congress at Washington there exist maps opposed to the United States' contention. The following may be mentioned:—

A map published by A. Bertrand of Paris in 1826, giving a delineation of the west coast of America, shows Alaska as a peninsula only. Again, Sharp's Student's Atlas (Chapman and Hall of London), 1850, shows the coast strip about 10 marine leagues wide from Mount St. Elias to latitude $56^{\circ} 15'$, thence south-west to Burrough's Bay. Revillagigedo is coloured as being British territory.

Another map showing the world on Mercator's projection in the same Atlas shows Russian America as confined to the mainland west of the 141st meridian.

A comprehensive Atlas, published by W. G. Tichnor of Boston, 1835, shows the boundary between the Russian and British possessions by a dash line, on the 141st meridian Arctic Ocean to the Pacific Ocean, marked "boundary settled in 1825." Upon this map a coloured line is drawn, apparently by hand, showing the boundary from the 141st meridian north of St. Elias, running along approximately parallel to the general line of coast to the head of Portland Canal. Another copy of the same Atlas, apparently older, shows the same dash line; but the coloured line added by hand runs into Lynn Canal on the west side near the head, and emerges near Endicott Arm, and from this point to latitude 56° , where it ends, leaves a very narrow strip between line and shore. From 56° to $54^{\circ} 40'$ the mainland is all shown as British territory.

In another Atlas published by Chapman and Hall, of London, 1844, described as an Atlas published by the Society for the discussion of useful knowledge, is a map of British North America,

which shows the boundary-line approximately 10 leagues from the shore to Burrough's Bay.

These maps are cited for the purpose of showing that the boundary-line shown upon the maps were all hypothetical, and differed greatly as between themselves.

Convention of 22nd July, 1892.

App. I, p. 269.

Finally, on this subject, reference is made to the Convention which was concluded between Great Britain and the United States on the 22nd July, 1892. This Convention has been already referred to, and is set out in the Appendix. It must be remembered that it was concluded after the diplomatic correspondence and communications which had taken place from 1825 to 1892, and followed not long after the letters of Secretary Bayard and the Earl of Iddesleigh, cited above. It provided for a determination of the boundary to follow the ascertainment of facts and data by joint survey, but made no reference to previous cartography.

In regard to the remarks offered upon the question of maps, they are made with a reservation of the right to deal with the subject fully in the British Counter-Case. It is obviously impossible at this stage to know what view will be presented by the United States, and the foregoing observations are made at this stage for the purpose of putting the Tribunal in possession at the outset of the general view taken by Great Britain upon the subject.





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